

**WIRELESS LIVINGSTON AGREEMENT
BETWEEN
LIVINGSTON COUNTY
AND
[NAME OF MUNICIPALITY]**

This Agreement ("the Agreement") is made between Livingston County, a Constitutional and Municipal Corporation, 304 E. Grand River, Howell, Michigan 48843 ("County"), and the [Name and Address of Municipality] ("Municipality"). In this Agreement the County and the Municipality may also be referred to individually as "Party" or jointly as "Parties."

PURPOSE OF AGREEMENT. Pursuant to the Urban Cooperation Act of 1967, 1967 PA 7, MCL 124.501, *et seq.*, the County and the Municipality enter into this Agreement for the purpose of delineating the relationship and responsibilities between the County and the Municipality regarding the Wireless Livingston Initiative. The Wireless Livingston Initiative has the following six goals: (1) Blanket the County with wireless internet service; (2) To break down the digital divide by providing access to all population within Livingston County; (3) To enhance the commercial and residential character of the County by embracing technology in county and local planning practices; (4) To provide a wireless network for the urban, suburban and rural settings; (5) Support economic development and improve the quality of life in the county; (6) Provide a continuing model of cooperation and collaboration between government, business and education.

Citizens, business entities, and governmental entities will all benefit from this wireless internet service. The citizens of the County will be more prepared to fill high-tech jobs; business entities will be better prepared to compete in the global market; and governmental entities, including Livingston County and the Municipality, will realize increased efficiencies when providing services to their citizens.

Neither the County nor the Municipality will own or operate the wireless internet service. Instead, the County will collect and pool public assets located throughout the County to license to the owner/operator of the wireless internet service in exchange for free wireless internet access at a certain bandwidth. The County will license the use of the collected assets to the owner/operator on a non-exclusive, non-interfering basis. The owner/operator shall not have any permanent or exclusive rights to these public assets.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 1.1. **Agreement** means the terms and conditions of this Agreement, the Exhibits attached hereto, and any other mutually agreed to written and executed modification, amendment, or addendum.
- 1.2. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, as defined herein, whether such Claim is brought in law or equity, tort, contract, or otherwise.
- 1.3. **Contract** means the contract between the County and Contractor and all the properly promulgated amendments. The Contract is attached as Exhibit C.
- 1.4. **Contractor** means the entity selected by the County to install, implement, operate, and maintain the wireless internet service.
- 1.5. **County** means Livingston County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
- 1.6. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.7. **Default** means a Party's failure to perform any obligation contained in this Agreement or if the wireless internet service offered pursuant to the Wireless Livingston Initiative ceases to exist.
- 1.8. **Municipality** means the _____, a Municipal and Constitutional Corporation including, but not limited to, its Council, Board, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors.
- 1.9. **Public Asset(s)** means any real or personal property including but not limited to structures, facilities, antennae, and/or land, owned by the Municipality.
- 1.10. **Wireless Livingston Advisory Board** means the Board that provides advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service.

- 1.11. **Wireless Livingston Initiative** means the wireless internet service (as fully described in the Contract) that will blanket all of Livingston County and that will be provided, owned, and operated by the Contractor.
2. **AGREEMENT EXHIBITS**. The Exhibits listed below and their properly promulgated amendments are incorporated and are part of this Agreement.
 - 2.1. **Exhibit A** – Public Asset License Agreement
 - 2.2. **Exhibit B** – Wireless Livingston Advisory Board
 - 2.3. **Exhibit C** – Contract between the County and Contractor (includes Scope of Work)
3. **COUNTY RESPONSIBILITIES**.
 - 3.1. The Municipality shall provide the County with a list and corresponding map of Public Assets that can be utilized for the Wireless Livingston Initiative.
 - 3.2. The County, specifically the Chairperson of the Board of Commissioners or or his designee, is authorized to execute the License Agreement, attached as Exhibit A to this Agreement, on behalf of the Municipality with the Contractor for use of Public Assets identified in the list from the municipality to be utilized for the wireless internet service.
 - 3.3. Prior to executing the License Agreement(s) for each individual Public Asset to be utilized, the County shall present the Municipality with a map identifying the specific Public Assets to be used and licensed and the Municipality shall handle approval or disapproval of such requests in accordance with its administrative procedures.
 - 3.4. The County shall not request the construction of new towers, buildings or underground facilities through this Agreement.
 - 3.5. The contractor is to provide the free access to the internet at 128 kbps up and down throughout the County and Municipalities. Beyond this service, the County or Municipality shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.
 - 3.6. The County shall designate an individual, who works for the County, to be a point of contact and information regarding this Agreement and the Wireless Livingston Initiative. The County shall ensure that the Contractor designates an individual, who works for the Contractor, to be a point of contact and information regarding the Wireless Livingston Initiative.
4. **MUNICIPALITY RESPONSIBILITIES**.

- 4.1. The Municipality shall use its best efforts to assist with the installation and implementation of the wireless internet service, including, but not limited to, waiving any local/municipal permit fees or other fees or local/ municipality costs associated with the installation, implementation, operation, and/or maintenance of the wireless internet service and providing space to locate the wireless equipment at no cost.
- 4.2. There shall be no costs (including, but not limited to, all electrical costs associated with installation and operation of the wireless equipment for wireless internet service) to the Municipality stemming from this Agreement, unless otherwise agreed to in writing by the Municipality.
- 4.3. The contractor is to provide the free access to the internet at 128 kbps up and down throughout the County and Municipalities. Beyond this service, the County or Municipality shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.
- 4.4. The Municipality shall designate an individual, who works for the Municipality, to be a point of contact and information regarding this Agreement and the Wireless Livingston Initiative.

5. **WIRELESS LIVINGSTON ADVISORY BOARD RESPONSIBILITIES.**

- 5.1. The Wireless Livingston Advisory Board shall provide advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service.
- 5.2. The structure, organization, and responsibilities of the Wireless Livingston Advisory Board are set forth in Exhibit B.

6. **CONTRACTOR RESPONSIBILITIES.**

- 6.1. Except as otherwise provided in this Agreement, the installation, implementation, operation, and maintenance of the wireless internet service shall be at the sole cost, expense, and risk of the Contractor.

7. **DURATION OF INTERLOCAL AGREEMENT.**

- 7.1. The Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party.
- 7.2. Unless extended by mutual, written agreement by both Parties, this Agreement shall remain in effect for six (6) years from the date the Agreement is completely executed by both Parties or until cancelled or terminated by either Party pursuant to Section 9.

8. **ASSURANCES.**

- 8.1. Except as provided in Exhibit A, each Party shall be responsible for its own acts and the acts of its employees, and agents, the costs associated with those acts, and the defense of those acts.
- 8.2. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 8.3. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement, including but not limited to, all FCC rules and regulations.

9. **TERMINATION OR CANCELLATION OF AGREEMENT.** The Municipality or the County may terminate or cancel this Agreement upon sixty (60) days written notice, if the other Party Defaults in any obligation contained in this Agreement and within the sixty (60) day notice period the Party failed to cure such Default or failed to take a course of action to cure such Default. The effective date of termination and/or cancellation and the specific Default shall be clearly stated in the written notice. If this Agreement is terminated and/or cancelled, the existing License Agreements executed pursuant to this Agreement shall still be valid.

10. **NO THIRD PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties and subject to Exhibit A, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.

11. **DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.

12. **PERMITS AND LICENSES.** Except as otherwise agreed to by the Parties, or provided for in this Agreement, the Contractor shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to install, own, operate, manage, and maintain the wireless internet service.

13. **RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.

14. **DELEGATION/SUBCONTRACT/ASSIGNMENT.** Neither Party shall delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
15. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.
16. **SEVERABILITY.** If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
17. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
18. **NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
 - 18.1. If Notice is sent to the County, it shall be addressed and sent to: Livingston County Department of Information Technology, Director, 304 E. Grand River, Suite 101, Howell, Michigan, 48843 and Chairperson of the Livingston County Board of Commissioners, 304 E Grand River, Howell, Michigan 48843
 - 18.2. If Notice is sent to the Municipality, it shall be addressed to: .
 - 18.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.
19. **DISPUTE RESOLUTION.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to the individuals listed in Section 18 for possible resolution. The individuals shall promptly meet and confer in an effort to resolve such dispute. If the

individuals cannot resolve the dispute in five (5) days, the dispute may be submitted to the signatories of this Contract or their successors in office. The signatories of this Contract may meet promptly and confer in an effort to resolve such dispute. If such dispute can not be resolved, the Parties may exercise their remedies at law and/or equity.

20. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE**. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 44th Judicial Circuit Court of the State of Michigan, the 53rd District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

21. **AGREEMENT MODIFICATIONS OR AMENDMENTS**. Any modifications, amendments, recessions, waivers, or releases to this Agreement must be in writing and agreed to by both Parties.

22. **ENTIRE AGREEMENT**. This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, _____ hereby acknowledges that he/she has been authorized by a resolution of the _____, a certified copy of which is attached, to execute this Agreement on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, Bill Rogers, Chairperson, Livingston County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Livingston County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of the Livingston County, and hereby accepts and binds the Livingston County to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

Bill Rogers., Chairperson
Livingston County Board of Commissioners

WITNESSED: _____ DATE: _____

Sally Reynolds, Clerk/Register of Deeds
County of Livingston

Exhibit A

Public Assets License Agreement

This **License Agreement** ("License") is made this ___ day of _____, 20___ between the **County of Livingston**, a Michigan municipal corporation and political subdivision of the State of Michigan, located at 304 E. Grand River Ave., Howell, Michigan 48843 ("County"), and Contractor, **MichTel Communications, LLC** (Michigan Corporate I.D. No. B5046M), located at 10 West Huron, Pontiac, Michigan 48341 ("Licensee").

The Parties agree to the following terms and conditions:

1. **Definitions.** The following words and expressions used throughout this License, whether used in the singular or plural, within or without quotation marks, or possessive or non-possessive, shall be defined, read, and interpreted as follows:
 - 1.1. *Agreement* means the terms and conditions of this License, the Attachments attached hereto, and any other mutually agreed to written and executed modification, amendment, or addendum to this License.
 - 1.2. *Claim* means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, as defined herein, whether such Claim is brought in law or equity, tort, contract, or otherwise.
 - 1.3. *Contract* means the contract between the County and Licensee and all the properly promulgated amendments.
 - 1.4. *County* means Livingston County, a Michigan municipal corporation and political subdivision of the State of Michigan including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
 - 1.5. *Day* means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.6. *Equipment* means the access points or their equivalents used to operate the wireless internet service and that will be placed on the Public Assets.
 - 1.7. *Licensee* means Contractor, MichTel Communications, LLC, and all employees, subcontractors, and agents of Licensee.
 - 1.8. *Public Assets* means the real or personal property owned by the County or Municipality and specifically described as: *[insert description of Public Asset]*
_____.

- 1.9. *Wireless Livingston Initiative* means the wireless internet service that will blanket all of Livingston County which will be provided, owned, operated, and maintained Licensee.
- 1.10. *Municipality* means the “name applicable Township/City/Village”, a Municipal and Constitutional Corporation including, but not limited to, its Board and any and all of its departments, its elected and appointed officials, board members, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons’ successors. For purposes of this section, the term Municipality is limited to the Municipality participating in the cooperative effort between the County and the Contractor in providing wireless internet service.
2. **Grant of License.** The County grants a non-exclusive license to use the Public Asset solely for the purposes set forth in this Agreement.
3. **Term.** The term of this License shall be until the earlier of the following:
- 3.1. _____,20____; or _____.
- 3.2. When the Equipment has not been used to provide wireless internet service by Licensee for a period of ninety (90) consecutive calendar days; or
- 3.3. When either party, at its election and with or without cause, delivers written notice of termination to the other party at least one-hundred eighty (180) calendar days prior of the date of such termination;
- 3.4. Upon either Licensee or the County giving written notice to the other of the occurrence or existence of a default by the other Party under the License or the Contract and the defaulting Party fails to cure, or commence good faith efforts to cure, such default within sixty (60) calendar days after delivery of such notice; or
- 3.5. Unless the County grants a written extension, one (1) year from the effective date of this License if Licensee has not started the construction and installation of the Equipment and two (2) years from the effective date of this License, if by such time construction and installation of the Equipment is not complete.
4. **Use.**
- 4.1. Licensee shall use the license provided under this License for providing wireless internet service as more fully described in the Contract.
- 4.2. Licensee and its Equipment may not unduly burden or interfere with the present or future use of the Public Asset. Except as otherwise provided by law, the County or Municipality may not unduly burden or interfere with or authorize third parties to unduly burden or interfere with Licensee's Equipment. Licensee's Equipment shall not endanger or injure persons or property in or about the Public Asset. If the County or Municipality reasonably determines that any portion of the

Equipment constitutes an undue burden or interference, due to changed circumstances, Licensee, at its sole expense, will modify the Equipment or take such other actions as the County or Municipality may determine is in the public interest to remove or alleviate the burden, and Licensee will do so within a reasonable time period.

- 4.3.** *Restoration of Public Asset.* Licensee will immediately, subject to seasonal work restrictions, restore, at Licensee's sole expense, in a manner approved by the County and Municipality, any portion of the Public Asset that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Equipment to a reasonably equivalent, or at Licensee's option, a better condition. In the event that Licensee fails to make such repair within a reasonable time, the County or Municipality may make the repair and Licensee will pay the costs the County or Municipality incurs for such repair.
- 4.4.** *Removal of Equipment.* Within ninety (90) calendar days of termination of this License, Licensee shall remove all Equipment on the Public Asset and restore the Public Asset according to Section 4.3. In the event, Licensee fails to remove the Equipment within the ninety (90) calendar day period, the County or Municipality may remove such Equipment and Licensee shall pay all costs, to the County or Municipality associated with the removal.
- 4.5.** *Marking.* Licensee will mark the Equipment pursuant to the County's requirements, including but not limited to, rules, regulations, and policies. The Licensee will use its best efforts to have the Equipment blend in with the surroundings and minimize visibility of the Equipment.
- 4.6.** *Installation and Maintenance.* The construction, installation, and maintenance of the Equipment shall only be performed pursuant to permit plans approved by the County and Municipality, prior to such construction, installation or maintenance. Licensee will install and maintain the Equipment in a safe condition.
- 4.7.** *Relocation.* If the County or Municipality requests Licensee to relocate, protect, support, disconnect, or remove its Equipment because of street or utility work, or other public projects, Licensee will relocate, protect, support, disconnect, or remove its Equipment, at its sole cost and expense, for the duration of the work or project. The work shall be completed within a reasonable time.
- 4.8.** *Public Emergency.* The County or Municipality has the right to sever, disrupt, or otherwise destroy the Equipment of Licensee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, the County or Municipality will attempt to provide notice to Licensee. Public emergencies are any condition, which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, terrorism, etc. Licensee is responsible for repair, at its sole cost and expense, of any of its Equipment damaged pursuant to any such action taken by the County or Municipality under this Section.

4.9. *Access.* The County and Municipality may impose certain reasonable restrictions on the access to the Public Assets in accordance with its customs, rules, or regulations.

5. General Terms.

5.1. *Compliance with Laws.* Licensee must comply with all laws, statutes, ordinances, rules, policies, and regulations (including but not limited to tax statutes) regarding the construction, installation, and maintenance of its Equipment, whether federal, state or local, now in force or which may be promulgated. Before any installation is commenced, Licensee must secure all necessary permits, licenses and approvals from governmental entities as may be required by law. Licensee shall be responsible for all costs or fees associated with obtaining all applicable permits, licenses, and governmental approvals. Licensee must comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) the National Electric Code (latest edition), and the International Construction Code (latest edition).

5.2. *Identification.* All personnel of Licensee who have as part of their normal duties contact with the public will wear on their clothing a clearly visible identification card bearing Licensee's name, their name and photograph. Licensee will account for all identification cards at all times. Every service vehicle of Licensee will be clearly identified as such to the public, for example, a magnetic sign with Licensee's name and telephone number.

5.3. Indemnification.

5.3.1. *Indemnity.* Licensee shall release, defend, indemnify, protect, and hold harmless the County and Municipality and their elected and appointed officers, employees, servants and agents, from any and all Claims arising out of or resulting from the acts or omissions of Licensee, or anyone claiming by or through them which are associated with this License. Licensee waives and releases all actions, liabilities, loss and damage including any subrogated rights it may have against the County and Municipality based upon any Claim brought against the County or Municipality suffered by a Licensee Employee. The Licensee's responsibilities as set forth in this section shall not be mitigated by the insurance coverage obtained by the Licensee pursuant to the requirements of this Agreement . The indemnification requirements set forth in this section shall remain in full force and effect in the event the insurance of the indemnifying party is exhausted or coverage is denied.

5.3.2. *Notice, Cooperation.* The County and Municipality will notify Licensee promptly in writing of any Claim. The County and Municipality will cooperate with Licensee in every reasonable way with respect to the defense of any such Claim.

5.3.3. Settlement. The County and Municipality will not settle any Claim subject to indemnification without the advance written consent of Licensee, which consent may not unreasonably be withheld. Licensee has the right to defend or settle, at its own expense, an Claim against the County and Municipality for which Licensee is responsible.

5.4. Insurance.

5.4.1. Coverage Required. Licensee must obtain all insurance as set forth below and file certificates evidencing it with the County. Such insurance must be maintained in full force and effect until the end of the Term.

5.4.1.1. Commercial general liability insurance, including products and completed operations liability, independent contractors liability, contractual liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCD coverage, in an amount not less than \$5,000,000.00.

5.4.1.2. Liability insurance for sudden and accidental environmental contamination with minimum limits of \$1,000,000.00 and providing coverage for claims discovered within three (3) years after the term of the policy.

5.4.1.3. Commercial general liability insurance, including products and completed operations liability, independent contractors liability, contractual liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCD coverage, in an amount not less than \$5,000,000.00.

5.4.1.4. Automobile liability insurance including automobile no-fault and hired and non-hired automobiles in an amount not less than \$5,000,000.00.

5.4.1.5. Liability insurance for sudden and accidental environmental contamination with minimum limits of \$1,000,000.00 and providing coverage for claims discovered within three (3) years after the term of the policy Workers' compensation insurance with statutory limits, employer's liability insurance with \$1,000,000.00 limits, and any applicable Federal insurance of a similar nature.

5.4.1.6. The coverage amounts set forth above may be met

by a combination of underlying or primary and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy must provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverage for any reason during the Term, or, when longer, for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

5.4.1.7. Prior to execution of the License by the County, Contractor shall provide evidence of the insurance coverage required herein; thereafter, Licensee will annually provide the County with a certificate of insurance evidencing such coverage.

5.4.1.8. All insurance policies, other than environmental contamination, will be written on an occurrence basis and not on a claims-made basis and the insurance policies shall contain a general aggregate per project.

5.4.2. *Additional Insured.* The County and Municipality shall be named as an additional insured on all policies other than worker's compensation and employer's liability. All insurance policies will provide that they may not be canceled, materially changed or not renewed unless the insurance carrier provides sixty (60) calendar days prior written notice to the County.

5.4.3. *Qualified Insurers.* All insurance will be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers will be rated A+ or better by A.M. Best Licensee.

5.4.4. *Deductibles.* The insurance policies required by this section shall not have deductibles in excess of \$50,000. Licensee will indemnify and save harmless the County and Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished.

5.4.5. *Contractors.* Licensee's contractors and subcontractors working on the Public Asset will carry in full force and effect all insurance coverages required by this Agreement. In the alternative, Licensee, at its expense, may provide such coverage for any or all its contractors or subcontractors by adding them to Licensee's policies.

5.4.6. Insurance Primary. Licensee's insurance coverage shall be primary and noncontributory over any other valid insurance or self-insurance carried by either the County or the Municipality.

5.4.7. Subrogation. The Licensee's insurance policies providing coverage for real and/or personal property shall contain a waiver of subrogation by which the insurance carrier waives all of such carrier's rights to proceed against the County and Municipality. Licensee releases the County and Municipality from any claims by them or anyone claiming through or under them by way of subrogation for damage caused by or resulting from risks insured under any insurance policy carried by Licensee.

5.5. Fees/Costs. Licensee is still subject to all municipal planning review and construction permitting requirements (including but not limited to fees and costs), unless such fees or costs are waived by the applicable governmental entity and/or the County.

5.6. Assignment. Licensee shall not assign the License, unless prior written approval is received from the County.

5.7. Notices.

5.7.1. Notices. All notices under this License must be given as follows:

If to County:

Livingston County Board of Commissioners
Maggie Jones - Chairman
304 E. Grand River - Suite 201
Howell, MI 48843 (Phone #517.546.3520)

AND

Livingston Co. Administrator
Robert R. Block - Administrator
304 E. Grand River - Suite 202
Howell, MI 48843 (Phone #517.546.3669)

If to Licensee:

MichTel Communications, LLC
Tony Yangouyian, General Manager
10 West Huron
Pontiac, MI 48342 (Phone #)

5.7.2. Change of Address. Licensee and County may change its address or personnel for the receipt of notices at any time by giving notice to the other as set forth above.

- 5.8. Bond.** Licensee shall supply a bond payable to the County which shall be executed by a corporation authorized to contract as a surety in the State of Michigan and which is on the United States Treasury list of approved sureties. The amount of the bond shall be \$100,000.00 and shall ensure the performance of all requirements of this License. Prior to execution of the License by the County, Licensee shall provide evidence of the bond required herein. This bond shall be renewed annually and the amount of the bond shall be reviewed annually by the County and Licensee to determine if the amount should be increased or decreased based upon the number of Public Assets utilized. Evidence of such bond shall be provided to the County upon request. The bond shall provide that it may not be canceled, materially changed or not renewed unless the corporation provides sixty (60) calendar days prior written notice to the County.
- 5.9. Interpretation and Severability.** The provisions of this License are liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision of this License be held unconstitutional, invalid, overbroad or otherwise unenforceable, such holding may not be construed as affecting the validity of any of the remaining conditions of this License. If any provision in this License is found to be partially overbroad, unenforceable, or invalid, Licensee and County may nevertheless enforce such provision to the extent permitted under applicable law.
- 5.10. Governing Law.** This License is governed by the laws of the State of Michigan.
- 5.11. Discrimination.** The Licensee shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.
- 5.12. Reservation of Rights.** This License does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Municipality or the County.
- 5.13. No Implied Waiver.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this License shall constitute a waiver of those rights with regard to any existing or subsequent breach of this License. No waiver of any term, condition, or provision of this License, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this License. No waiver by either Party shall subsequently affect its right to require strict performance of this License.
- 5.14. Captions.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this License are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be

considered as part of this License. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or non-possessive use in this License shall be deemed the appropriate plurality, gender or possession as the context requires.

5.15. Modifications or Amendments. Any modifications, amendments, recessions, waivers, or releases to this License must be in writing and agreed to by both Parties.

5.16. Entire Agreement. This License represents the entire agreement and understanding between the Parties. This License supersedes all other oral or written agreements between the Parties. The language of this License shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESSES

COUNTY OF LIVINGSTON

By:
Maggie Jones, Chairperson
County Board of Commissioners

STATE OF MICHIGAN)
)ss.
COUNTY OF LIVINGSTON)

This Agreement was acknowledged before me, a Notary Public, this ___ day of _____, 2007, by Maggie Jones, Chairperson, Livingston County Board of Commissioners.

_____, Notary Public
Livingston County, Michigan
Acting in Livingston County, Michigan
My Commission Expires:_____

WITNESSES

MICHEL COMMUNICATIONS, LLC

By: _____
Its: _____

This Agreement was acknowledged before me, a Notary Public, this ____ day of _____, 2007, by _____, _____, MichTel Communications, LLC.

_____, Notary Public
_____ County, Michigan
Acting in the County of _____
My Commission Expires: _____

EXHIBIT B

Wireless Livingston Advisory Board

1. The purpose of the Wireless Livingston Advisory Board shall be to:
 - a. Provide advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service and the captive portal; and
 - b. Create, regularly review, and amend, when necessary, the Wireless Livingston Advisory Board Bylaws.

2. The Initial Wireless Livingston Advisory Board shall serve for one year and consist of the following persons:
 - a. Livingston County Director of Information Technology;
 - b. Representative of service provider, MICHTEL;
 - c. Executive Director of the Greater Brighton Area Chamber of Commerce;
 - d. Two representatives from each of the Regional Cooperation Group communities Brighton Township, City of Brighton, Green Oak Township and Hamburg Township;
 - e. One representative from SEMCOG;
 - f. One representative from the Livingston County Road Commission;
 - g. Two representatives of the Livingston County Board of Commissioners.

3. The Wireless Livingston Advisory Board shall meet at least quarterly. Proper notice of the meetings shall be sent to all members at least seven (7) calendar days before the meeting is scheduled.

EXHIBIT C

LIVINGSTON WIRELESS INTERNET SERVICE CONTRACT

This Contract made and entered into this ____ day of _____, 200__, between the **COUNTY OF LIVINGSTON**, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as the "County"), and **MICHEL COMMUNICATIONS, LLC** (hereinafter referred to as the "Contractor"), as further described in the following Table.

COUNTY OF LIVINGSTON 304 E. Grand River Howell, Michigan 48843 (herein, the "County")	MICHEL COMMUNICATIONS, LLC Michigan Corporate I.D. No. B5046M 10 West Huron Pontiac, MI 48341 (herein the "Contractor")
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In this Contract, either Contractor or the County may also be referred to individually as a "Party" or jointly as the "Parties."

INTRODUCTION

- A.** The purpose of this Contract is to blanket the County with a free wireless internet service. Citizens, business entities, governmental entities, and Municipalities will all benefit from this wireless internet service. The citizens of the County will be more prepared to fill hi-tech jobs; business entities will be better prepared to compete in the global market; and the governmental entities, including the County and Municipalities located in the County, will realize increased efficiencies when providing services to their citizens. Contractor shall install, operate, manage, own, and maintain the wireless internet service. The County and Municipalities shall not be responsible for any costs or fees associated with the installation, operation, management, ownership, and/or maintenance of the wireless internet service.
- B.** The Contractor has offered to provide such the County-wide wireless internet services for the County.
- C.** The County has determined that Contractor is qualified to perform the County-wide wireless internet services.
- D.** As more fully described in this Contract, Contractor shall own, install, operate, manage, and maintain the wireless internet service.
- E.** Contractor shall retain all revenue generated from and associated with the wireless internet service.
- F.** The contractor is to provide the free access to the internet at 128 kbps up and down throughout the County and Municipalities. Beyond this service, the County or Municipality shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.

- G.** This Contract is organized and divided into the following "Section" or "Sections" for the convenience of the Parties.

SECTION 1. CONTRACT DOCUMENTS AND DEFINITIONS
SECTION 2. CONTRACT EFFECTIVE DATE AND TERMINATION
SECTION 4. FINANCIAL RESPONSIBILITIES
SECTION 5. ASSURANCES AND WARRANTIES
SECTION 6. INDEMNIFICATION
SECTION 7. INSURANCE
SECTION 8. GENERAL TERMS AND CONDITIONS

FOR AND IN CONSIDERATION of the mutual promises, obligations, representations, and assurances in this Contract, the Parties **HEREBY AGREED**, as follows:

§1. CONTRACT DOCUMENTS AND DEFINITIONS

The following words and expressions when printed with the first letter capitalized as shown herein, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 1.1.** "*Contractor Employee*" means without limitation, any employees, officers, directors, members, managers, trustees, volunteers, attorneys, and representatives of Contractor, and also includes any Contractor contractors, subcontractors, independent contractors, contractor's suppliers, subsidiaries, joint ventures or partners, and/or any such persons, successors or predecessors, employees, (whether such persons act or acted in their personal, representative or official capacities), and/or any and all persons acting by, through, under, or in concert with any of the above. "Contractor Employee" shall also include any person who was a Contractor Employee at anytime during the term of this contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.2.** "*Claims*" means any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgements, deficiencies, liability, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against the county or Municipality, or for which the County or Municipality may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
- 1.3.** "*County*" means the County of Livingston, a municipal corporation and political subdivision of the State of Michigan, its departments, divisions, authorities, boards, committees, and "County Agent" as defined below.

- 1.4. "*County Agent*" means all elected and appointed officials, directors, board members, council members, commissioners, employees, volunteers, representatives, and/or any such persons' successors (whether such person act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them. "County Agent" shall also include any person who was a "County Agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and serving as an Agent.
- 1.5. "*Day*" means any calendar day, which shall begin at 12:00:01 am and end at 11:59:50 pm.
- 1.6. "*Contract Documents.*" This Contract includes and fully incorporates herein all of the following documents and their properly promulgated amendments:
 - 1.6.1. Scope of Work (see section 3)
 - 1.6.2. License Agreement for Public Assets (Exhibit A – Interlocal Agreement)
 - 1.6.3. Wireless Livingston Advisory Board (Exhibit B – Interlocal Agreement)
 - 1.6.4. Map Book (Pilot Area Maps)
- 1.7. "*Wireless Livingston Advisory Board*" means the Board that provides advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service.
- 1.8. "*Wireless Livingston Initiative*" means the wireless internet service that will blanket the entire County which will be provided, owned, and operated by the Contractor.
- 1.9. "*Public Asset(s)*" means any real or personal property including, but not limited to, structures, facilities, antennae, and/or land, owned by the County or Municipality.
- 1.10. "*Municipality*" means a Municipality participating in the cooperative effort between the County and the Contractor in providing wireless internet service.

§2. CONTRACT EFFECTIVE DATE AND TERMINATION

- 2.1. The effective date of this Contract shall be December 1, 2007, and unless otherwise terminated or canceled as provided below, it shall end at 11:59 p.m. on November 30, 2013, the "Contract Expiration Date." This Contract may be renewed for three (3) additional terms of three (3) years each prior to the Contract Expiration or prior to the expiration of each renewal term by either Party providing notice of its intent to renew to the other Party thirty (30) calendar days before Contract expiration or expiration of the renewal term, and upon approval of the extension by both parties. Notwithstanding the above, under no circumstances shall this Contract be effective and binding until and unless:
 - 2.1.1. This Contract is signed by a Contractor Employee, legally authorized to bind Contractor; and

- 2.1.2.** This Contract is signed by the Chairman of the Livingston County Board of Commissioners, as provided for on the signature page of this Contract, who shall be the final signatory to this Contract.
- 2.2.** The County may terminate and/or cancel this Contract (or any part thereof) upon ninety (90) calendar days written notice to Contractor, if Contractor defaults in any obligation contained herein, and within the ninety (90) calendar day notice period Contractor has failed or has not attempted to cure any such default. The effective date of termination and/or cancellation and the specific alleged default shall be clearly stated in the written notice.
- 2.3.** Contractor may terminate and/or cancel this Contract (or any part thereof) upon ninety (90) calendar days written notice to the County, if the County defaults in any obligation contained herein, and within the ninety (90) calendar day notice period the County has failed or has not attempted to cure any such default. The effective date of termination and/or cancellation and the specific alleged default shall be clearly stated in the written notice.
- 2.4.** Notwithstanding any other provision in this Agreement to the contrary, either party to this Contract can terminate this Contract prior to the termination date set forth herein if notice is given in writing at least ninety (90) calendar days prior to the date upon which such termination becomes effective.
- 2.5.** Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages or any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination and/or cancellation of this Contract. The County or Municipality shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is canceled or terminated.

§3. SCOPE OF WORK

- 3.1.** Contractor and the County shall perform all services identified and itemized in Exhibit I, Scope of Work, time being of the essence.
- 3.2.** Contractor shall provide the County and the Wireless Livingston Advisory Board with an implementation schedule for wireless internet service for the remaining areas of the County, the areas not covered by Exhibit IV, within ninety (90) calendar days of execution of the Contract by both Parties.
- 3.3.** Contractor shall provide wireless internet service pursuant to this Contract to the areas in the Municipalities outlined in the map book attached as Exhibit IV by March 31, 2008, time being of the essence.
- 3.4.** Contractor shall retain all revenue generated from and associated with the wireless internet service.
- 3.5.** The contractor is to provide the free access to the internet at 128 kbps up and down throughout the County and Municipalities. Beyond this service, the County or

Municipality shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.

- 3.6. Within ninety (90) calendar days of execution of the Contract by both Parties, Contractor shall provide the County with information and evidence that demonstrates that Contractor has the financial ability to complete the implementation of the Wireless Livingston Initiative. The County, in its sole and reasonable discretion, shall determine if the information and evidence provided by Contractor is satisfactory.
- 3.7. Contractor shall accept and review advice, recommendations, and suggestions from the Wireless Livingston Advisory Board regarding the installation, operation, management, and maintenance of the wireless internet service, when such advice, recommendations, and/or suggestions are received by Contractor from the Wireless Livingston Advisory Board. The structure and organization of the Wireless Livingston Advisory Board are set forth in Exhibit II.

§4. FINANCIAL RESPONSIBILITIES

- 4.1. Under no circumstances shall the County or Municipalities participating in the Wireless Livingston Initiative be responsible for any cost, fee, fine, penalty, or direct, indirect, special, incidental or consequential damages incurred or suffered by Contractor in connection with or resulting from Contractor's performance of work under this Contract.
- 4.2. This Contract does not authorize any in-kind services by either Party, unless expressly provided herein.

§5. ASSURANCES AND WARRANTIES

- 5.1. *Service Warranty.* Contractor warrants that all services performed hereunder will be performed in a manner that complies with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 5.2. *Business and Professional Licenses.* Contractor will obtain and maintain at all times during the term of this Contract all applicable business and professional licenses necessary to provide the contracted services.
- 5.3. *Equipment and Supplies.* Contractor is responsible for providing all equipment and supplies to perform the work required by this Contract.
- 5.4. *Taxes.* Contractor shall pay, its own local, state and federal taxes, including without limitation, social security taxes, and unemployment compensation taxes. The County or Municipalities shall not be liable to or required to reimburse Contractor for any federal, state and local taxes or fees of any kind.
- 5.5. *Contractor's Incidental Expenses.* Contractor shall be solely responsible and liable for all costs and expenses incident to the performance of all work required by this Contract including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.

5.6. *Contractor Employees.*

5.6.1. Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to provide the Work under this Contract. Contractor shall ensure all Contractor Employees have all the necessary knowledge, skill, and qualifications necessary to perform the required services and possess any necessary licenses, permits, certificates, and governmental authorizations as may required by law.

5.6.2. Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employee.

5.6.3. All Contractor Employees shall wear and display appropriate county-provided identification at all times while working on County premises.

5.6.4. All Contractor Employees assigned to work under this Contract may, at the County's discretion, be subject to a security check and clearance by the County.

5.7. *Contractor Employee-Related Expenses.* All Contractor Employees shall be employed at Contractor's sole expense (including employment-related taxes and insurance) and Contractor warrants that all Contractor Employees shall fully comply with and adheres to all of the terms of this Contract. Contractor shall be solely and completely liable for any and all applicable Contractor Employee's federal, state, or local payment withholdings or contributions and/or any and all Contractor Employee related pension or welfare benefits plan contribution under federal or state law. Contractor shall indemnify and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee, including, but not limited to, Worker's Compensation, disability pay or other insurance of any kind.

5.8. *Full Knowledge of Service Expectations and Attendant Circumstances.* Contractor warrants that before entering into this Contract, it had a full opportunity to review the proposed services, and review all County requirements and/or expectations under this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform all obligations under the Contract as specified herein.

5.9. *Independent Contractor.* Nothing in this Contract is intended to establish an employer employee relationship between the County and either Contractor or any Contractor Employee. All Contractor Employees assigned to provide services under this Contract by Contractor shall, in all cases, be deemed employees of Contractor and not employees, agents or subcontractors of the County or Municipality.

§6. INDEMNIFICATION

6.1. *Indemnification.*

- 6.1.1. Contractor shall indemnify and hold the County and/or Municipalities, and their elected and appointed officers, employees, servants and agents, participating in the Wireless Livingston Initiative harmless from any and all Claims which are incurred by or asserted against the County or Municipality by any person or entity, alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of Contractor, Contractor's Employees, and its subcontractors, servants or agents, including, without limitation, all Claims relating to injury or death of any person or damage to any property.
- 6.1.2. Contractor shall have no rights against the County or Municipality for any indemnification (e.g., contractual, equitable, or by implication), contribution, subrogation, and/or any other right to be reimbursed by the County or Municipality except as expressly provided herein.
- 6.1.3. Contractor waives and releases all actions, liabilities, loss and damage including any subrogated rights it may have against the County or Municipality based upon any Claim brought against the County or Municipality suffered by a Contractor Employee.
- 6.1.4. The Contractor's responsibilities as set forth in this section shall not be mitigated by the insurance coverage obtained by the Contractor pursuant to the requirements of this Contract. The indemnification requirements set forth in this section shall remain in full force and effect in the event the insurance of the indemnifying party is exhausted or coverage is denied.

§7. INSURANCE

- 7.1. *Coverage Required.* Licensee must obtain all insurance as set forth below and file certificates evidencing it with the County. Such insurance must be maintained in full force and effect until the end of the Term.
 - 7.1.1. Commercial general liability insurance, including products and completed operations liability, independent contractors liability, contractual liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCD coverage, in an amount not less than \$5,000,000.00.
 - 7.1.2. Liability insurance for sudden and accidental environmental contamination with minimum limits of \$1,000,000.00 and providing coverage for claims discovered within three (3) years after the term of the policy.
 - 7.1.3. Automobile liability insurance including automobile no-fault and hired and non-hired automobiles in an amount not less than \$5,000,000.00.
 - 7.1.4. Workers' compensation insurance with statutory limits, employer's liability insurance with \$1,000,000.00 limits, and any applicable Federal insurance of a similar nature.

- 7.1.5.** The coverage amounts set forth above may be met by a combination of underlying or primary and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy must provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverage for any reason during the Term, or, when longer, for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 7.1.6.** Prior to execution of the License by the County, Contractor shall provide evidence of the insurance coverage required herein; thereafter, Licensee will annually provide the County with a certificate of insurance evidencing such coverage.
- 7.1.7.** All insurance policies, other than environmental contamination, will be written on an occurrence basis and not on a claims-made basis and the insurance policies shall contain a general aggregate per project.
- 7.2.** *Additional Insured.* The County shall be named as an additional insured on all policies other than worker's compensation and employer's liability. All insurance policies will provide that they may not be canceled, materially changed or not renewed unless the insurance carrier provides sixty (60) days prior written notice to the County.
- 7.3.** *Qualified Insurers.* All insurance will be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers will be rated A+ or better by A.M. Best Licensee.
- 7.4.** *Deductibles.* The insurance policies required by this section shall not have deductibles in excess of \$50,000. Licensee will indemnify and save harmless the County from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished.
- 7.5.** *Contractors.* Licensee's contractors and subcontractors working on the Public Asset will carry in full force and effect all insurance coverages required by this Agreement. In the alternative, Licensee, at its expense, may provide such coverage for any or all its contractors or subcontractors by adding them to Licensee's policies.
- 7.6.** *Insurance Primary.* Licensee's insurance coverage shall be primary and noncontributory over any other valid insurance or self-insurance carried by either the County or Municipality..
- 7.7.** *Subrogation.* The Licensee's insurance policies providing coverage for real and/or personal property shall contain a waiver of subrogation by which the insurance carrier waives all of such carrier's rights to proceed against the County or Municipality. Licensee releases the County or Municipality from any claims by them or anyone claiming through or under them by way of subrogation for damage caused by or resulting from risks insured under any insurance policy carried by Licensee.

§8. GENERAL TERMS AND CONDITIONS

- 8.1.** While Contractor retains the right to perform services at any time, Contractor must obtain prior permission by the County or Municipality for access to Public Assets after the County's or Municipality's regular business hours.
- 8.2.** *Cumulative Remedies.* A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 8.3.** *Survival of Terms and Conditions.* The following terms and conditions shall survive and continue in full force beyond the termination and/or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their very nature:
- "ASSURANCES AND WARRANTIES";
 - "INDEMNIFICATION";
 - "Damage Clean Up To County or Municipality Property and/or Premises";
 - "Audit";
 - "Severability";
 - "Governing Law/Consent To Jurisdiction And Venue"; and
 - "Survival of Terms And Conditions".
- 8.4.** *No Third Party Beneficiaries.* Except as provided for the benefit of the Parties and the participating Municipalities, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' rights in this Contract, and/or any other right, in favor of any other person or entity.
- 8.5.** *Compliance with Laws.* Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.
- 8.6.** *Permits and Licenses.* Contractor shall be responsible for obtaining and maintaining throughout the term of this Contract all licenses, permits, certificates, and governmental authorizations necessary to perform all of its obligations under this Contract and to conduct business under this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate or governmental authorizations necessary to provide services under this Contract.
- 8.7.** *Discrimination.* Contractor shall not discriminate against persons to receive services under this Agreement or against an employee or applicant for employment because of sex, race, religion, color, national origin, age, height, weight, marital status, or handicap in violation of State and Federal law.
- 8.7.1.** Contractor shall promptly notify the County of any complaint or charge filed and/or determination by any Court or administrative agency of illegal discrimination by Contractor.

- 8.7.2.** The County, in its discretion, may consider any illegal discrimination described above as a breach of this Contract and may terminate or cancel this Contract immediately with notice.
- 8.8.** *Reservation of Rights.* This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the County and Municipality.
- 8.9.** *Force Majeure.* Notwithstanding any other term or provision of this Contract, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, any law, order, regulation, direction, action, or request of the United States government or of any other government, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor difficulties. Reasonable notice shall be given to the affected Party of any such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its obligations under this contract in the event of a reasonably anticipated, insurable business risk such as business interruption and/or any insurable casualty or loss.
- 8.10.** *Conflict of Interest.* Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.321, *et seq.*), no contracts shall be entered into between the County and Municipality, including all agencies and departments thereof, and any County or Municipality Agent, to avoid any real or perceived conflict of interest. Contractor shall identify any Contractor Employee or relative of Contractor's Employees who are presently employed by the County or Municipality. Contractor shall give the County and Municipality notice if there are any County or Municipality Agents or relatives of County or Municipality Agents who are presently employed by Contractor.
- 8.11.** *Damage and Clean up to County or Municipality Property and/or Premises.* Contractor shall be responsible for any damage to any County or Municipality property, its premises, or a County or Municipality Agent that is caused by Contractor or Contractor's Employees. If damage occurs, Contractor shall make necessary repairs and/or replacements to the damaged property to the satisfaction of the County and the Municipality owning the property. If the damage cannot be completed to the County's and Municipality's satisfaction, Contractor shall reimburse the County and Municipality the actual cost for repairing or replacing the damaged property. Contractor shall be responsible for assuring that all County and Municipality and municipal sites are restored to their original condition after work performed under this Contract is complete.
- 8.12.** *Use of Confidential Information.* Contractor and/or Contractor Employees and the County shall not reproduce, provide, disclose, or give access to Confidential Information to any third party, or to any Contractor Employee or County Agent not having a legitimate need to know any such information and data, and shall not use the Confidential Information for any purpose other than performing its services under this Contract. Notwithstanding the foregoing, a Party may disclose the Confidential Information if required or permitted by law, statute or other legal process; provided that

the Party (i) gives the other Party prompt written notice of an impending disclosure, (ii) provides reasonable assistance to the other Party in opposing or limiting the disclosure, and (iii) makes only such disclosure as is permitted, compelled, or required.

8.12.1. This Contract imposes no obligation upon a Party with respect to any Confidential Information which it can establish by legally sufficient evidence:

- (i) was in the possession of, or was known by the Party, prior to its receipt from the other Party, without an obligation to maintain its confidentiality; or
- (ii) is obtained by a Party from a third party having the right to disclose it, without an obligation to keep such information confidential.

8.12.2. As used in this Contract, Confidential Information means all information that a Party is required or permitted by law to keep confidential, including but not limited to, County GIS data.

8.13. *Contractor Use of County Licensed Software.* In order for Contractor to perform its services under this Contract, the County may permit Contractor or Contractor Employees to access certain copyrighted Software licensed to the County. Contractor or Contractor Employees shall not: transfer, remove, use, copy, or otherwise provide or make available any such copyrighted Software or Documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Contractor nor Contractor Employees shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any copyrighted Software. Neither Contractor nor Contractor Employees shall use any copyrighted software contrary to the provisions of any applicable Software license agreement or state or federal law.

8.14. *Contractor Use of County Servicemark.*

8.14.1. The County grants Contractor the non-exclusive right to use its servicemark, specifically the servicemark listed in Exhibit V, on any and all publications, whether print or electronic format, related to or associated with the Wireless Livingston Initiative. Permission to use the servicemark extends to use on Contractor's website.

8.14.2. Contractor shall only use the servicemark in Exhibit V for the purposes described in this Contract and not for any other purpose.

8.14.3. Contractor acknowledges that the County has certain rights in the servicemark listed in Exhibit V and that Contractor has no right, title, or interest in this servicemark.

8.14.4. The servicemark covered under this Section shall be provided to Contractor at no Cost.

- 8.14.5.** Contractor permission to use the servicemark in Exhibit V shall cease when the Contract is terminated and/or canceled. Upon termination and/or cancellation of this Contract, Contractor shall not display the servicemark on its website or distribute or print any publication (in any format) displaying or containing the servicemark.
- 8.15.** *Linking to County Website.*
- 8.15.1.** Contractor may link to the County Website subject to the following conditions: Neither Contractor nor Contractor's Website shall not create a frame, browser, or border environment County's Website.
- 8.15.2** Neither Contractor nor Contractor's Website shall reproduce or copy the content on the County's Website. County trademarks or servicemarks may not be placed on Contractor's Website without the County's prior written permission.
- 8.15.3.** Contractor permission to link to the County Website shall cease when the Contract is terminated and/or canceled or when one of the conditions listed in this Section is breached. Upon termination and/or cancellation of this Contract of the conditions listed in this Section, Contractor shall immediately stop linking to the County Website.
- 8.16.** *Project Managers.* Each Party shall designate an employee or agent to act as a Project Manager. The Project Managers shall serve as a contact point for all matters related to the services to be performed under this Contract. Contractor's Project Manager shall coordinate with the County's Project Manager. Contractor shall provide the name and qualifications of its Project Manager and an alternate. In addition to a Project Manager, Contractor shall designate an employee or agent to act as a Network Engineer and an Executive Sponsor (an individual dedicated to overseeing the Wireless Livingston Initiative and reporting to the Wireless Livingston Advisory Board) during the term of this Contract
- 8.17.** *Dispute Resolution.* All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Managers for possible resolution. The Project Managers may promptly meet and confer in an effort to resolve such dispute. If the Project Managers cannot resolve the dispute in ten (10) business days, the dispute may be submitted to the signatories of this Contract or their successors in office. The signatories of this Contract may meet promptly and confer in an effort to resolve such dispute.
- 8.18.** *Access and Records.* Contractor will maintain accurate books and records in connection with the services provided under this Contract for 36 months after end of this Contract, and provide the County with reasonable access to such book and records.
- 8.19.** *Audit.* Contractor shall allow the County's Auditing Division, or an independent auditor hired by the County, to perform Contract compliance audits with the authority to access all pertinent records and interview any Contractor Employee throughout the term of this

Contract, and for a period of three (3) years after termination or cancellation of this Contract.

- 8.19.1.** Contractor shall explain any audit finding, questionable costs, or other Contract compliance deficiencies to the County within forty-five (45) days of receiving the final audit report. Contractor's response shall include all necessary documents and information that refute the final audit report. Failure by Contractor to respond in writing within forty-five (45) days shall be deemed acceptance of the final audit report.
- 8.20.** *Delegation /Subcontract/Assignment.* Contractor shall not delegate, assign, or subcontract any obligations or rights under this Contract or this entire Contract without the prior written consent of the County.
- 8.20.1.** The rights and obligations under this Contract shall not be diminished in any manner by assignment, delegation or subcontract.
- 8.20.2.** Any assignment, delegation, or subcontract by Contractor and approved by the County, must include a requirement that the assignee, delegee, or subcontractor will comply with the rights and obligations contained in this Contract.
- 8.20.3.** Contractor shall remain primarily liable for all work performed by any subcontractors or delegees. Contractor shall remain liable to the County for any obligations under the Contract not completely performed by any Contractor delegee or subcontractor.
- 8.20.4.** Should a subcontractor or delegee fail to provide the established level of service and response, Contractor shall contract with another agency for these services in a timely manner. Any additional costs associated with securing a competent subcontractor or delegee shall be the sole responsibility of Contractor.
- 8.20.5.** In the event that a Petition in Bankruptcy is filed and there is an assignment of this Contract by a Court, the County may declare this Contract null and void.
- 8.21.** *No Implied Waiver.* Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any right or remedy under this Contract shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Contract. No waiver of any term, condition, or provision of this Contract, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.
- 8.22.** *Severability.* If a court of competent jurisdiction finds a term, condition, or provision of this Contract to be illegal or invalid, then the term, condition, or provision shall be deemed severed from this Contract. All other terms, conditions, and provisions of this Contract shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County and Municipality harmless is found illegal or

invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County and Municipality.

8.23. Captions. The section and subsection numbers, captions, and any index to such sections and subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this contract. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or non-possessive use in this contract shall be deemed the appropriate plurality, gender or possession as the context requires.

8.24. Notices. Notices given under this Contract shall be in writing and shall either be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given when one of the following occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

8.24.1. If notice is sent to Contractor, it shall be addressed to:

MichTel Communications, LLC
Tony Yangouyian, General Manager
10 West Huron
Pontiac, MI 48342

8.24.2. If notice is sent to the County, it shall be addressed to:

Livingston County Board of Commissioners Maggie Jones - Chairman 304 E. Grand River - Suite 201 Howell, MI 48843	-&-	Livingston Co. Administrator Robert R. Block - Administrator 304 E. Grand River - Suite 202 Howell, MI 48843
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8.24.3. Either Party may change the address or individual to which notice is sent by notifying the other party in writing of the change.

8.25. Contract Modifications or Amendments. Any modifications, amendments, recessions, waivers, or releases to this Contract must be in writing and agreed to by both Parties. Unless otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by an expressly authorized Contractor Employee and by the same person who signed the Contract for the County or other County Agent as authorized by the Livingston County Board of Commissioners.

8.26. Governing Laws/Consent to Jurisdiction and Venue. This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set

forth above shall not be deemed to preclude the enforcement of any judgement obtained in such forum or taking action under this Contract to enforce such judgement in any appropriate jurisdiction.

8.27. *Entire Contract.* This Contract represents the entire Contract and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements or Contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

8.28. *Certification.* The persons signing this Contract on behalf of the parties hereto certify by said signatures that they are duly authorized to sign on behalf of said parties and that this Contract has been authorized by said parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first above written on behalf of Contractor and the County, and by doing so legally obligates and binds Contractor and the County to the terms and conditions of this Contract.

MICHEL COMMUNICATIONS, LLC

Dated: _____

By: _____
Tony Yangouyian, General Manager

COUNTY OF LIVINGSTON

Dated: _____

By: _____
Maggie Jones Chairperson
County Board of Commissioners

Approved as to Scope of Work:

Dated: _____

By: _____
Paul McNamara, Director
Information Technology Department