

## 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 **MICHTEL 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")	MICHTEL 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:

<b>Livingston County Board of Commissioners</b> Maggie Jones - Chairman 304 E. Grand River - Suite 201 Howell, MI 48843	<b>-&amp;-</b>	<b>Livingston Co. Administrator</b> 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