

**MEMORANDUM OF UNDERSTANDING  
FOR AID TO CONSTRUCTION OF FIBER BUILD  
BETWEEN Rainbow Communications, LLC  
AND the City of Atchison, Kansas  
AND the County of Atchison, Kansas**

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between Rainbow Communications, LLC, whose address is 608 Main Street, P.O. Box 147, Everest, KS, 66424, the City of Atchison, Kansas, whose address is 515 Kansas Ave., Atchison, Kansas, 66002, and the County of Atchison, Kansas, whose address is 423 N. 5<sup>th</sup> St., Atchison, Kansas, 66002.

2. **Purpose.** The purpose of this MOU is to establish the terms and conditions under which Rainbow Communications shall construct fiber plant to deliver service to, and shall thereafter deliver service to, the Shannon Industrial Park, as requested by the City of Atchison, Kansas, and the County of Atchison, Kansas.

3. **Term of MOU.** This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect for five years. At the end of these five years, all parties agree to revisit the terms of this MOU and, in good faith, enter into another MOU as appropriate.

4. **General Provisions**

A. **Amendments.** Any party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. **Applicable Law.** The construction, interpretation, and enforcement of this MOU shall be governed by the laws of the State of Kansas. The courts of the State of Kansas shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the Atchison County, Kansas, district court.

C. **Entirety of Agreement.** This MOU, consisting of three (3) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

D. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

**E. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

**5. Terms of MOU.**

**A. Rainbow Communications, LLC will engineer, supervise, and contract an approximately three (3) mile fiber build from the Rainbow Communications point of presence (POP) located on Kingman Road to the Shannon Industrial Park.**

**B. The parties acknowledge that the fiber build will cost \$67,995.46 and will be completed by Rainbow Communications on or before May 1, 2018.**

**C. The City of Atchison, Kansas and the County of Atchison, Kansas, have agreed to equally split the cost of the fiber build and each will pay to Rainbow Communications at the time of completion of the fiber build a total of \$33,997.73.**

**D. Rainbow Communications shall be responsible for service to individual, privately owned businesses now or hereafter located within the Shannon Industrial Park and shall provide such service independent of its relationship with the City of Atchison, Kansas, and the County of Atchison, Kansas.**

**E. Rainbow Communications will have unlimited access to the equipment cabinet and key entry to the fenced water tower area within Shannon Industrial Park. The City of Atchison, Kansas and the County of Atchison, Kansas, hereby grant to Rainbow Communications all permissions necessary to allow Rainbow Communications to place equipment cabinets or other material determined by Rainbow Communications as necessary to provide efficient service to Shannon Industrial Park, in the fenced area around and/or on the water tower. Should Rainbow Communications desire to install wireless equipment on the water tower in order to provide wireless service of any type, the parties agree to negotiate such an agreement in a timely manner and in good faith. Additionally, the parties agree that Rainbow Communications will install a flush mount buried vault. The parties note and agree that this vault will not require electricity at this time but in the future agree that this vault may be replaced, at Rainbow Communications' sole determination and discretion, with an above-ground 4ft x 4ft PON cabinet. Such PON cabinet would be installed over the top of the buried vault and, at the time of the**

installation of such PON cabinet, require electricity. In total, Rainbow Communications will have designated a dedicated 10ft x 10ft area with access to electricity. In addition, the parties agree that Rainbow Communications shall have all necessary access on any easements and rights of way on all necessary roads and within the Shannon Industrial Park in order to achieve the purposes of this MOU.

F. The construction estimate, dated May 16, 2017, is attached hereto and incorporated by reference.

G. All fiber plant shall be owned and operated by Rainbow Communications, LLC.

6. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

For Rainbow Communications

For the City of Atchison, Kansas

Jean Smith                      2-1-18  
Name                                      Date

Allen Rea                                      \_\_\_\_\_  
Name                                      Date

General Manager/CEO  
Title

MAYOR  
Title

For the County of Atchison, Kansas

Eric Noll  
Name                                      Date

Chairman, Commissee At. Co.  
Title

#2018-1434