

When recorded, return to:

City of Mesa
Real Estate Services/Engineering
PO Box 1466
Mesa, AZ 85211-1466

LICENSE AGREEMENT – TELECOMMUNICATIONS

This Agreement (“Agreement”) is effective as of _____ 2024 (the “Effective Date”) between the MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT (“District”), on behalf of MESA COMMUNITY COLLEGE (“College”), and the CITY OF MESA, an Arizona municipal corporation (“City”). The District and City may be referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

A. The District desires to construct, install, and use a conduit system for, *inter alia*, telecommunication fiber and related uses. The Conduit System includes a duct bank with multiple, separate conduits, pull boxes, conduit, manhole, and other related improvements as further described and defined in Section 1 of this Agreement and as shown in the sets of engineering plans that are attached hereto as Exhibit A (the “Plans”).

B. Certain portions of the Conduit System will be constructed on City property, over which District desires to acquire a license (the “Sites”), for the continued operation, maintenance, upgrade (including the installation of additional fiber), and repair of the Conduit System. The Sites are legally described and depicted on Exhibit B.

C. The City is willing to grant a license to District on the terms and conditions set forth in this Agreement, and the Parties agree to the construction, ownership, use, and maintenance of the Conduit System as set forth in this Agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing recital and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. Grant of License. City grants to District a license (“License”) to use that portion of City property that is legally described and depicted in attached Exhibit B, along with the right of ingress and egress for access to the Sites, for all purposes contemplated by and set forth in this Agreement, including but not limited to: construction, installation, use, operation, replacement, maintenance, upgrading (including the installation of additional fiber and conduit), and repairing a conduit system that includes a duct bank with multiple, separate conduits, pull boxes, and manholes (collectively, the “Conduit System”). The Conduit System is generally depicted in the attached Exhibit A and includes the improvements as shown in the Plans.

2. Term. The initial term of this Agreement shall be for five (5) years (the “Term”), commencing on the Effective Date of this Agreement. The term shall automatically renew for additional five (5) year terms (and every 5 years thereafter) provided that the District is not in breach of this Agreement as of the end of

the Term (or then applicable five-year extension) or District cures such a breach within the time to cure as permitted in this Agreement. The City may terminate this agreement by serving notice on the District at least six months prior to the end of any five-year extension, but in any event no earlier than twenty (20) years from the Commencement Date.

3. License Fee. For the use of the Sites and License granted herein, District agrees that the Conduit System will be available for shared use pursuant to that certain First Amended and Restated Intergovernmental Agreement June of 2012 between the City, the District, and Mesa United School District, subject to availability and technical compatibility. In the event of shared use, District shall remain responsible for the cost and expense of all maintenance, repair, and future expansion and improvements to the Conduit System.

4. Nonexclusive Rights. City acknowledges that the District and District Sublicensees may peaceably and quietly have, hold and enjoy the use of the Sites. District acknowledges that the City may lease or license its property to other users so long as the City and its leases and licensees do not interfere with the District's and the District's Sublicensees' use of, or rights to, the Sites.

5. Construction Activities, Maintenance, Relocation, Ownership, and Notice. District shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the Conduit System and City shall have no obligation to repair such damage—except where the damage is caused by the sole and exclusive actions of the City or its agent. Excluding relocations reasonably requested by the City and repairs or maintenance to the Conduit System, District shall not relocate, materially modify, or materially alter the Conduit System any time after issuance of the permit(s), except upon City's written approval, which approval will not be unreasonably withheld, delayed, or conditioned.

5.1. District's installation of the Conduit System shall be in accordance with the City of Mesa Engineering & Design Standards and as set forth in a City-issued permit. Additionally, those phases of construction and installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of the Communications Network shall be subject to reasonable regulation by the City Engineer or designee and the City's permitting process.

5.2 District shall bear the entire cost of timely relocating its Conduit System located within City property, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City. If District is required to relocate its Conduit System due to the construction of a public improvement City shall provide Licensee with sixty (60) calendar days' notice before any required action of District to relocate affected portions of the Conduit System and shall cooperate with District to identify a replacement and alternative location within City property for the relocation of affected portions of the Conduit System. District shall promptly remove the designated portions of the Conduit System. District, at its sole cost and expense, shall restore all public and private property damaged by its removal and relocation of the Conduit System to a condition substantially comparable to the condition before removal and relocation of the Conduit System. City will make reasonable efforts to design and construct projects pursuant to this section so as to minimize relocation expenses to District, and shall entertain a reasonable request to support existing facilities in place. If District fails to relocate as required herein, the District shall reimburse City for actual and reasonable direct damages and costs incurred by City as a result of such delays.

5.3 RESERVED

5.4 Each Party shall be given the opportunity to be present during any construction or installation or similar procedures involving the Conduit System by the other Parties or sublicensees; accordingly, a Party shall give the other Parties at least two (2) business days written notice of the commencement of

such construction or installation, except such notice shall not be required for emergency repairs. City reserves the right to shut down any construction or installation work that in its sole judgment, reasonably exercised, does not conform to the aforementioned laws, codes, rules, requirements, plans, and specifications.

5.5 Prior to any construction, upgrade, or repair to the Conduit System, the Party (or its sublicensee) engaged in such activity shall notify 811 or the successor entity or service to 811. Additionally, each Party shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of any improvements within the Site upon receipt of a locate call or as promptly as possible, but in no event later than two business days.

5.6 Damage Notification. If a Party becomes aware of damage to any portion of the Conduit System (even if the damage is only to its own improvements), that Party shall promptly notify all Parties of the damage so the other Parties can independently inspect their portions of the Conduit System.

5.7 Sublicense Requirements. District shall require its sublicensees to comply with all terms of this Agreement including the maintenance provisions herein. Further, if the District or sublicensees under this Agreement fail to maintain its equipment and improvements such that it affects or reasonably may affect the health, welfare, or safety of the public or the City's employees, agents, officers, or contractors, the City make take reasonable action to protect the health, welfare, or safety of such individuals. The City may recover its documented and reasonable costs from the District or sublicensee for such costs.

5.8 Insurance. Any work on the Sites performed by District's Sublicensees or their contractors, shall also be subject to the same insurance requirements as those applicable to the District under this Agreement.

6. Restoration of the Site. Within ninety (90) days after expiration or termination of this Agreement for any reason: District shall remove the Conduit System and shall restore the Sites at its cost to the condition existing on the Commencement Date, except for normal wear and tear. District shall coordinate the removal of its improvements and restoration of the Sites with the City. Notwithstanding the foregoing, the underground facilities shall not be removed except upon the written approval of the City. Any improvements or any other personal property not removed within 90 days after the expiration or termination of this Agreement shall be subject to possession by the City and may be sold.

7. Default. A Party will be in default if it fails to comply with the terms of this Agreement within thirty (30) days of receipt of written notice reasonably describing the default from a non-defaulting Party.

7.1 Sublicensee's Default and Remedy. District Sublicensees shall comply with all the terms and conditions of this Agreement; a District Sublicensee will be in default if it fails to comply with the terms of this Agreement within thirty (30) days of receipt of written notice to the District for a default of a District Sublicensee that reasonably describes the default. In addition to all remedies at law and equity, if a District Sublicensee fails to cure a default within thirty days of such notice (or such extended cure period as may be allowed under Section 7.2), such Sublicensee's rights under this License may be terminated by written notice from the City.

7.2 Extended Cure Period. For any default under this Section 7 that cannot be reasonably cured within 30 calendar days after receipt of written notice despite the defaulting Party's due diligence in pursuing a cure shall not be a default so long as that Party continues to diligently work to cure the default and the default is cured within 60 days of receipt of notice. If the default involves a violation of this Agreement that may affect the health, welfare or safety of persons or property, the Party

receiving the notice shall take immediate action to protect persons or property while working to cure the default.

7.3 Health or Safety Default. If any Default affects or reasonably may affect the health, welfare, or safety of the public or the City's employees, agents, or contractors, the City may immediately, and without notice, take all reasonable action to protect such individuals. The City may recover its documented and reasonable costs from the District or its Sublicensee for all such costs, which shall be paid within 30 days of invoice.

7.4 Good Faith Resolution. Promptly after the issuance of a notice of default, the Parties shall appoint representatives at their executive levels to discuss in good faith the issues relating to the notice of default. The Parties agree to act reasonably to resolve the default without the need for terminating this Agreement before its expiration date.

7.5 Remedies. Whenever any Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with this Sections 7, the non-defaulting Parties may take any of the following actions: (i) an action for specific performance and/or injunctive relief to enforce the terms of this Agreement; and (ii) termination of this Agreement.

8. Indemnification.

8.1 Each Party (the "Indemnifying Party") and shall indemnify, hold harmless and defend the other Party, and its board, council, employees, officers, and agents (collectively, the "Indemnified Entities") against any and all liability, claims, costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with or incident to or arising out of: (i) the occupancy, use, service, operations, or performance of work in connection with the Conduit System or this Agreement, (ii) the negligent acts or omissions of Indemnifying Party or an employee, agent or contractor of the Indemnifying Party. Indemnifying Party shall not be responsible for the negligence or willful misconduct of the Indemnified Entities.

8.2 City and its employees, officers, and agents assume no responsibility for losses suffered by the District due to theft or the disappearance of the equipment or other personal property, except those caused by the negligence or willful misconduct of the City or its officers, employees or agents.

8.3 Each Party shall include provisions in its Sublicensees that require the its sublicensees to indemnify, defend, and hold harmless the Parties to this Agreement with provisions substantially similar to the provisions of Paragraph 8.1 of the Agreement.

8.4 The indemnification, duty to defend, and hold harmless obligations set forth in this Paragraph 8 shall survive the termination or expiration of this Agreement.

9. Hazardous Materials. The District and its Sublicensees shall not keep, store sell or dispose of on or about the Sites any materials, wastes or substances which are in any way explosive, hazardous, dangerous or toxic under any federal, state or local environmental, health or safety law, ordinance, code, statute, rule or regulation. The City grants use of electrical transformers that are usual and customary in telecommunications sites, as long as they are certified not to contain PCB's. District and its Sublicensees shall notify the City immediately if its employees, agents or contractors cause any hazardous substance or oil or fuel spillage or release of hazardous materials on campus. The District and its Sublicensees shall indemnify, hold harmless and defend the City and its Council, employees, officers, and agents against any and all liability, claims, costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property arising out of its use of hazardous substances, wastes, or

materials. Each Party and each Sublicensee (each separately as to its own actions or inactions) shall be responsible for and shall promptly conduct any investigation and remediation as required by any statutory or common law of all actual or potential spills or other releases of any hazardous substances, wastes or materials caused by that its activities or those of its officers, employees, agents or contractors which have occurred on the Sites. District shall promptly give notice to the City of any possible injury, loss, or damage to persons or property occurring on the Sites, or discharge of hazardous substances, wastes, or materials.

10. Assignments and Liens. Except as to Sublicensees as permitted by this Agreement and subject to Sublicensees agreeing to the terms and limitations of this Agreement the District may not sublease, sublicense, transfer, or assign this Agreement or the License rights granted herein without the prior written consent of the City; provided for further clarification, the District may enter into sublicenses without the prior written consent of the City so long as the sublicensees agree to the terms and limitations of this Agreement.

11. Attorney's Fees. If a Party institutes an administrative proceeding (e.g., mediation or arbitration) or files a lawsuit to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees, including those incurred in any subsequent appeals.

12. Licenses and Permits. The District shall, at its own expense, obtain all permits, certificates, licenses or other approvals that may be required by federal, state, or local authorities.

13. Suitability of Use. The District accepts the Sites in "AS IS" condition, as of the Effective Date, subject to all applicable zoning, federal, state and local laws and ordinances governing the Sites. The District warrants that it has inspected the Sites and exercised due diligence in evaluating the suitability and lawfulness of the Sites for the purposes outlined in this Agreement.

14. Nondiscrimination. Each Party and their Sublicensees shall comply with all applicable laws, regulations, rules and executive orders relating to nondiscrimination in employment and in the provision of services.

15. Conflict of Interest. Each Party acknowledges that the other Party has the statutory right for three (3) years under A.R.S. § 38-511, to cancel this Agreement or subsequent renewal if, for any reason any person involved in negotiating, drafting, securing, or renewing this Agreement on behalf of a Party becomes an employee or agent of the other Party in any capacity, or a consultant to the other Party with respect to this Agreement.

16. Notices. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid. Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective on the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided. Any notices permitted hereunder may be given by a Party's legal counsel. Notices shall be provided to:

As to District:

Director of Strategic Business Support Services
Maricopa County Community College District
2411 West 14th Street
Tempe, AZ 85281

Copy to:
Legal Services Department
Attn: Assistant General Counsel
Maricopa County Community College District
2411 West 14th Street
Tempe, AZ 85281

As to City:

City of Mesa
Director of Real Estate Department
20 East Main Street
PO Box 1466
Mesa, AZ 85211-1466

Copy to:
City of Mesa
City Attorney
20 East Main Street
PO Box 1466
Mesa, AZ 85211-1466

As to College:

Mesa Community College
Attn: Vice President, Administrative Services
1833 W. Southern Avenue
Mesa, AZ 85202

Copy to:
Mesa Community College

17. Insurance. The District shall maintain during the term of this Agreement insurance policies described below issued by companies licensed in Arizona with a current A.M. Best rating of A:VII or better. At the signing of this Agreement and annually thereafter, the District shall furnish to the City certificates of insurance evidencing the required coverages, conditions, and limits required by this Agreement. District shall require its licensees to comply with and satisfy all the insurance requirements in this Agreement. Insurance coverage required under this Agreement is:

17.1 Commercial General Liability. CGL insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, personal injury, and products and completed operations, including but not limited to, the liability assumed under the indemnification provisions of this Agreement.

17.2 Automobile Liability. Auto insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to owned, hired, and non-owned vehicles.

17.3 Workers' Compensation. Workers' Compensation Insurance with limits statutorily required by any Federal or state law and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

17.4 Professional Liability. Professional liability insurance will be required of subcontractors covering acts, errors, mistakes, and omissions arising out of the work or services performed by District, or any person employed by District, with a limit of not less than \$1,000,000 each claim.

17.5 In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two years past the expiration of this Agreement and must be evidenced by annual certificates of insurance.

17.6 District may satisfy all the insurance requirements in this Agreement via a self-insurance program with self-insured retention(s) and/or deductibles.

18. Compliance with Law. District and sublessees shall comply with all applicable laws concerning the performance of this Agreement, and the conduct of its business.

19. Governing Law, Exclusive Venue. The law of the State of Arizona shall govern the interpretation and performance of this Agreement. Any action brought to enforce this Agreement or the License granted herein may only be brought in a court in Maricopa County, Arizona.

20. Relationship of Parties. The employees of a Party shall not be, and shall not be deemed or considered, the employees of the other Parties.

21. Amendment. The Parties may modify this Agreement only through a written amendment to it signed by representatives of each party authorized to sign contracts for that Party.

22. Entire Agreement. This Agreement and its Exhibits, which are incorporated herein, contain all the agreements, promises and understandings between the parties and supersede all prior negotiations and agreements.

23. Severability. If any provision of this Agreement is declared invalid or unenforceable, that provision shall be deemed modified to the extent necessary to make it valid and enforceable. If it cannot be so modified, it shall be deemed severed, and the remaining provisions of this Agreement shall remain in full force and effect.

24. Recordation of License. After the execution of this Agreement by City, Cox, and District, this Agreement and License may be recorded by any Party in the official records of Maricopa County.

25. Nondiscrimination. No Party shall illegally discriminate in either the provision of services, or in employment, against any person because of sex, race, disability, national origin, veteran's status, sexual orientation or religion. The Parties agree to comply with all applicable federal and state laws, rules, regulations, and executive orders relating to non-discrimination, affirmative action and equal employment opportunity.

26. Legal Worker Requirements. As mandated by Arizona Revised Statutes § 41-4401, MCCCDC is prohibited after September 30, 2008 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A. That statute requires that employers verify the employment eligibility of their employees through the federal E-verify system. This provision provides notice of the requirements and penalties specified in those statutes.

27. No Boycott of Israel. To the extent enforceable under applicable laws, each Party certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

28. A.R.S. § 35-394. Each Party certifies that it does not currently, and agrees for the duration of the contract that it will not, use; i) the forced labor of ethnic Uyghurs in the People's Republic of China; ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or iii) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If any Party becomes aware during the term of the Agreement that it is not in compliance with this, the Party shall notify each other Party within five (5) business days after becoming aware of the noncompliance. Failure of the Party to provide a written certification that the Party has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance shall result in the termination of this Agreement unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

29. Recitals. The Recitals set forth in Paragraphs A through C, inclusive, are incorporated into this Agreement by reference, and form a part of this Agreement.

30. No Third-Party Beneficiaries, Sublicensees Termination Upon Party Termination. No third parties are intended to acquire rights under this Agreement. On termination or expiration of this Agreement for any reason as to District the District's Sublicensees rights under this Agreement shall automatically terminate and City shall have no obligation to any District Sublicensees.

[Signatures appear on the following pages]

The Parties have executed this Agreement as of the date first above written.

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

By: [Signature]
Name: JAMES H. CURTIN
Title: Sr. Associate General Counsel
Date: May 8, 2024

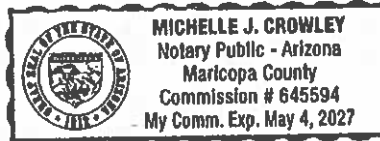
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 8th day of May, 2024, by Michelle Crowley, the Sr. Administrative Assistant of Maricopa County Community College District, who acknowledged he/she signed the foregoing instrument on behalf of Maricopa County Community College District.

Michelle Crowley
Notary Public

My commission expires:

May 4, 2027



CITY OF MESA

By:

Christopher J. Brady
City Manager

Date:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Christopher J. Brady, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged he signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:
