

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. 099-040**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING A REVOCABLE LICENSE TO COMMUNICATION SYSTEMS DEVELOPMENT, INC. DBA METROMEDIA FIBER NETWORK SERVICES TEXAS, INC., TO OCCUPY, MAINTAIN AND UTILIZE CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE LIMITS OF THE TOWN FOR THE PURPOSE OF THE INSTALLATION AND MAINTENANCE OF FIBER-OPTIC TELECOMMUNICATION CABLES; PROVIDING FOR THE TERMS AND CONDITIONS OF THIS LICENSE; PROVIDING FOR COMPENSATION TO BE PAID TO THE TOWN; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** A revocable License, subject to the terms and conditions of this Ordinance, is hereby granted to Communication Systems Development, Inc. dba Metromedia Fiber Network Services Texas, Inc. (the "Licensee"), to occupy, maintain and utilize for the purpose set out herein, in, on, above or below the subsurface space of the public rights-of-way of the Town of Addison, Texas (the "City"), within the limits of dedicated rights-of-way of said streets and alleys.

**Section 2.** This License shall remain in effect, unless sooner terminated according to other terms and provisions herein contained, or as allowed by law, or until access line rates have been adopted by the Public Utility Commission of Texas and implemented by the Licensee, in accordance with Local Government Code, Chapter 283, which is anticipated to be no later than June 1, 2000. Thereafter, Licensee shall pay to the City access line fees at the rates established by the Public Utilities Commission of Texas as applicable to the City.

**Section 3.** There is hereby granted, subject to the City's prompt receipt of the monetary compensation stated herein and the acceptance hereof, to Licensee, by this revocable License Ordinance (hereinafter referred to as the "License") (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, and maintain in, along, across, on, through, and under the public streets, alleys, and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network").

**Section 4.** Licensee shall pay to the City annually on June 1 of each year, unless sooner terminated, on the adoption of this License by the City Council the greater of the sum of either **Two (\$2.00) DOLLARS** per linear foot of installation of the Network placed in, on or over the public rights-of-way, or a minimum fee of **Five Thousand (\$5,000.00) Dollars**. The first annual fee to be due and payable upon the acceptance of this Ordinance, as required in Section 7, prorated to June 1, 2000, together with the sum of One Thousand Dollars (\$1,000.00) for each street crossing in the initial construction, which in any way alters or disturbs the surface of the public right-of-way, except for boring in the soil, which does not cause disruption to vehicle or pedestrian traffic, and for each

such new street crossing in the twelve months subsequent to the previous annual payment, which is due with the next annual payment after such street crossing. Such compensation shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by the Licensee. All sums payable to the City hereunder shall be paid to the City Finance Director of the City, unless notified otherwise in writing. In the event this License is terminated prior to the one year, a prorated amount will be refunded to the Licensee.

**Section 5.** That the License hereby granted is subject to the following terms and conditions:

- (a) All facilities of the Licensee which are designed and installed within City rights-of-way shall be in accordance with the City Code of Ordinances and the requirements for Right-Of-Way/Easement Construction.

All portions of the Network and any other facilities installed or maintained by the Licensee shall be placed overhead or underground, as required by then current City requirements.

The Licensee shall submit to the City Engineer detailed construction plans and maps showing the location and proposed routing of all facilities to be installed within the City streets and alley rights-of-way, to include if they are overhead or underground, not less than thirty (30) days prior to the commencement of said construction. The City Engineer shall review said plans and may require reasonable modifications in order to protect existing or anticipated public improvements or utilities, and to minimize traffic interruption. The Licensee shall then cause the appropriate public records to be modified so as to notify other property owners or engineers of said improvements within the rights-of-way.

Licensee may not begin construction until the location and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the City.

Any request for expansion may be denied by the City when, in the reasonable opinion of the City Engineer, there is insufficient room in the City right-of-way to accommodate the expansion. The determination of the City Engineer shall be the final administrative decision.

- (b) The location and route of all conduits, fiber, cables and facilities placed and constructed by the Licensee in the construction and maintenance of its Network within the rights-of-way streets and alleys in the City shall be subject to the lawful, reasonable and proper control and direction of the City.
- (c) In the event the construction or maintenance of the Network requires the temporary closing of a traffic lane or lanes, the Licensee shall notify the Streets Department of the City not less than three (3) days prior to the construction or maintenance. The Streets Department may require the submittal of a traffic control plan, and may also require that all lanes be open and available to traffic during peak traffic hours.

This paragraph shall not apply to emergency repairs.

- (d) The Licensee shall conduct all traffic control in accordance with the latest version of the Texas Manual on Uniform Traffic Control Devices, as it may be amended from time to time.
- (e) The Licensee shall obtain a permit from the Public Works Department of the City prior to commencing any construction, reconstruction or maintenance.
- (f) Nothing contained in this Ordinance shall obligate or restrict the Licensee in exercising its rights voluntarily to enter into joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies which are authorized to operate within the City.
- (g) The surface of any public street, avenue highway, alley, sidewalk, parkway or landscaped area disturbed by the Licensee in the construction or maintenance of the Network shall be restored to the satisfaction of the City Public Works Director within a reasonable time after the completion of the work. Should the City reasonably determine, within one (1) year from the date of such restoration, that such surface requires additional restoration work to place it in as good a condition as before the commencement of the work, the Licensee shall perform such additional restoration work to the reasonable satisfaction of the City. No public avenue, highway, alley, sidewalk, parkway, or landscaped area shall be encumbered for a longer period than shall be reasonably necessary to execute all work.
- (h) Upon reasonable notice, as determined by the circumstances, which will be limited in emergency situations, and request of the City and at Licensee's cost, the Licensee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, or as required for public construction projects, as determined by the City. If Licensee, after written notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Licensee, all without compensation or liability for damages to Licensee. Licensee shall promptly restore the public streets, alleys, and rights-of-way to as good a condition as before commencement of the work, to the reasonable satisfaction of the City Engineer. Licensee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.
- (i) The Licensee is subject to the police powers of the City, other governmental powers, and the City's rights as a custodian of public property under state and federal laws. The Licensee is subject to City ordinances and requirements and federal and state laws and regulations in connection with the construction, expansion, reconstruction, maintenance or repair of the Network that is in, on or over the public rights-of-way.
- (j) At the City's written request, Licensee shall furnish to the City within fifteen (15) days following the receipt of the request accurate and complete information relating

to the construction, reconstruction, removal, maintenance, operation and repair of the Network performed by the Licensee in the public rights-of-way.

- (k) Within 120 days of completion of each new segment of Licensee's Network, the Licensee shall supply the City with a complete set of "as built" drawings for the segment in a format prescribed by the City. A Licensee must obtain the City's approval before relocating the Licensee's Network in, on or over the public rights-of-way. The City may not unreasonably withhold approval, subject to this paragraph and other applicable City Ordinances.
- (l) The City may require reasonable bonding requirements of the Licensee, as are required of other entities that place facilities similar to the Network in the public rights-of-way.
- (m) If, during the term of this License, the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the Licensee. If the City closes or abandons a right-of-way that contains a portion of Licensee's Network, the City shall close or abandon such rights-of-way subject to the rights conveyed in the License.
- (n) If the City gives written notice, the Licensee shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of Licensee's Network that is in the public rights-of-way within 180 days following the date of such notice. For projects expected to last beyond 180 days, the City will confer with Licensee before determining the alterations to be required and the timing thereof. The City shall give notice whenever the City has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a City or other governmental public improvements in the rights-of-way. This section shall not be construed to prevent a Licensee's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal.
- (o) During the term of its License, Licensee may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its Network. All tree trimming shall be performed in accordance with standards promulgated by the City. Should Licensee, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, unless agreed to in writing by the parties for a different period, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Licensee shall promptly reimburse the City for all costs incurred within five (5) working days.

**Section 6.** This License is granted subject to the following conditions, terms and reservations:

- (a) That at such time as this License is terminated or canceled for failure to comply with the terms and conditions of this License, the Licensee, upon orders issued by the City,

with reasonable notice, acting through its City Manager, shall remove all installations, improvements and appurtenances owned by it situated in, under or attached to the Licensed area, and shall restore the premises to their former condition, normal wear and tear excepted, in accordance with the reasonable requirements of the City Manager at the sole cost of Licensee. In the event, upon termination of this License, Licensee shall fail to remove its installations, improvements and appurtenances and to restore the Licensed area in compliance with orders issued by the City, or such work is not done to the reasonable satisfaction of the City Manager, then in either event the City shall have the right to do all work necessary to restore said area to its former condition, normal wear and tear excepted, or cause such work to be done, and to assess the cost of all such work against Licensee; in neither event shall the City be liable to Licensee on account thereof.

- (b) The License is nonexclusive and is made to expressly subject and subordinate to the right of the City to use the Licensed area for any public purpose.
- (c) It is further understood that if and when the City, in the exercise of its discretion, shall determine that the grade of any street, alley, sidewalk or parkway should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the Licensed area, and/or any of Licensee's installations and improvements thereon, any modifications or changes in construction or reconstruction of any public improvements attributable to Licensee's use of the Licensed area and/or its installations and improvements thereon, shall be made at the sole expense of Licensee and to the reasonable satisfaction of the City's Public Works Director.
- (d) INSURANCE.
  - (1) Licensee, and its agents and contractors that are in the public rights-of-way, shall obtain and maintain in full force and effect throughout the term of this License, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas, and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poor's. The insurance shall be issued in the standard form approved by the State Board of Insurance. Licensee shall provide City with proof of such insurance so required at the time of filing the acceptance of License, as required by Section 7 herein. The City reserves the right to review these insurance requirements during the effective period of the License, and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Licensee.
  - (2) Subject to Licensee's right to maintain reasonable deductibles in such amounts as are approved by the City, Licensee, and its agents and contractors

in the public rights-of-way, shall obtain and maintain in full force and effect for the duration of this License, and any extension or renewal thereof, at Licensee's sole expense, insurance policy coverage in the following type and minimum amounts:

- (a) Worker's Compensation and Employer's Liability Statutory  
\$500,000/500,000/100,000
  
- (b) Commercial General (public) Liability to include coverage for the following where the exposure exists:
  - (i) Premises operations Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
  - (ii) Independent contractors
  - (iii) Products/completed
  - (iv) Personal injury
  - (v) Contractual liability
  - (vi) Explosion, collapse and underground property damage
  
- (c) Comprehensive automobile insurance coverage for loading and unloading hazards, for:
  - (i) Owned/leased automobiles Combined single limit for bodily injury and property damage - \$1,000,000 per occurrence or its equivalent
  - (ii) Non-owned automobiles
  - (iii) Hired automobiles
  
- (3) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements hereto.
  
- (4) Licensee agrees that, with respect to the above required insurance, all insurance contracts will contain the following required provisions:
  - (i) Name the City and its officers, employees, board members, and elected representatives as additional insureds (as the interests of each insured may appear) as to all applicable coverage;

- (ii) Provide for thirty (30) days notice to the City for cancellation, non-renewable, or material change;
  - (iii) Provide for notice to the City Secretary by certified mail; and
  - (iv) Provide that all provisions of this License ordinance, as amended, concerning liability, duty and standard of care, including the Indemnity, Section 6(f) of this License ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.
- (5) The insurance policies obtained by Licensee in compliance with this Section shall be subject to reasonable approval by the City, and such proof of insurance shall be filed and maintained with the City Secretary during the term of this License ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Licensee shall immediately advise the City Secretary of any actual or potential litigation that may develop that would affect Licensee's insurance.
- (6) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Licensee and the City and shall be primary coverage for all losses covered by the policies, except as provided for in Section 6(f) below.
- (7) The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.
- (8) Companies issuing the insurance policies shall have no recourse against the City for payment of any premium or assessments which all are set at the sole risk of the Licensee.

Licensee shall carry said insurance at its expense, and shall furnish to the City a certificate of such coverage. Said policy shall bear an endorsement to the effect that no cancellation will be effective without first giving thirty (30) days written notice to the City Manager. In the event Licensee shall allow said insurance coverage to lapse during the term hereof, then this License shall automatically be canceled and terminated. Nothing in this Ordinance shall be construed as to prevent Licensee from satisfying any insurance obligations pursuant to this Ordinance under a blanket policy or policies or pursuant to a secession to self-insure, as certificated by the Texas Insurance Commission.

Should Licensee fail to provide a certificate evidencing insurance coverage in accordance with the specifications as required by this section within thirty (30) days subsequent to mailing of a written request therefor, the City Manager may terminate the License granted herein, upon written notice to Licensee.

- (e) This License is subject to all applicable State laws, the provisions of the Charter of the City as it now exists, or as may hereafter be adopted or amended, and the ordinances of the City now in effect or those which may hereafter be passed or adopted. The City shall have the right to increase or decrease the compensation to be charged for the use contemplated by this section granted in accordance with the provisions of the City's Code of Ordinances as it now exists, or as may hereafter be adopted or amended where necessary to ensure that the City is compensated for use of its valuable property.
- (f) Licensee shall indemnify and hold the City and its officers, officials, agents and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the Licensee, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Licensee, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If Licensee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the City and the Licensee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Licensee shall make no claim of any kind or character against the City for damages that it may suffer by reason of the installation, construction, reconstruction, operation and/or maintenance of any public improvement or utility installed within said rights-of-way, including but not limited to, any water and/or sanitary sewer mains and/or storm sewer facilities and whether such damage is due to flooding, infiltration, back flow and/or seepage caused from the failure of any such installation, natural causes, or any other cause, except gross negligence or willful conduct.

- (g) This License is subject to any existing utilities or communication facilities, including, without limitation, drainage, presently located within the Licensed area, owned and/or operated by the City or any utility or communications company, public or private, and to any vested rights presently owned by any utility or communications company, public or private, for the use of the Licensed area for facilities presently located within the boundaries of said Licensed area. It is the intent of the foregoing that this permission herein is made expressly subject to the utilization of the Licensed area for communication and utility purposes, both public and private, including,



without limitation, drainage, over, under, through, across and along the hereinabove described rights-of-way. No buildings shall be constructed or placed upon, over or across the Licensed area in such a manner as to interfere with the operation of any utilities and communication facilities (including, without limitation, drainage facilities).

**Section 7.** The License granted hereby shall not become effective until and unless the Licensee files an acceptance, in writing, to the terms and conditions of this Ordinance with the City Secretary of the City.

**Section 8.** The terms and conditions contained in this License shall be binding upon Licensee, its successors and assigns.

**Section 9.** This License may not be assigned without prior written approval from the City Manager, or his designee, which consent shall not be unreasonably withheld. Such assignment shall recite that it is subject to the terms, restrictions, and conditions contained in this Ordinance. The assignee shall deliver a copy of the assignment, along with the assignee's written acceptance of the provisions of this Ordinance, to the City Secretary within ten (10) days of such assignment. Should Licensee fail to obtain prior approval for assignment of this License or fail to provide the City with the required written acceptance and a copy of the assignment, the City Manager may terminate this License. Nothing contained herein shall be deemed to limit or preclude Licensee from leasing any portion of the Network to third parties in the ordinary course of Licensee's business.

**Section 10.** The City Secretary is hereby authorized and directed to certify a copy of this Ordinance, which certified copy shall be delivered to the City Manager, or his designee. Upon receipt of the compensation fee for the year and acceptable certificate of insurance, the City Manager, or his designee, shall deliver to Licensee the certified copy of this Ordinance. The City Manager, or his designee, shall be the sole source for receiving certified copies of this ordinance one (1) year after its passage.

**Section 11.** If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this License ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this License ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this License ordinance shall be valid and enforceable to the fullest extent permitted by law.

**Section 12.** All notices required or permitted to be given to either party by the other party under any provisions of this License shall be in writing and shall be deemed served:

- (1) When delivered by hand or by Federal Express or similar service to that party's address set forth below during normal business hours; or

- (2) When mailed to any other person designated by that party in writing herein to receive such notice, via certified mail, return receipt requested.

Notice shall be given to the following:

- (3) If to City:  
Ron Whitehead  
City Manager  
P.O Box 9010  
Addison, Texas 75001

- (4) If to Licensee:  
CSDI
- \_\_\_\_\_
- \_\_\_\_\_

**Section 13.** Licensee agrees that in the event the City adopts a Construction in the Public Right-of-Way Ordinance to be applied uniformly to telecommunications providers, to the extent there is conflict between this License and the aforementioned Ordinance, the Ordinance shall control as to right-of-way management issues, including, but not limited to, insurance, indemnification, construction standards, notification requirements, and relocation provisions. The scope of this License and the compensation to be paid shall not be altered by the Ordinance.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas on this the 28<sup>th</sup> day of September, 1999.

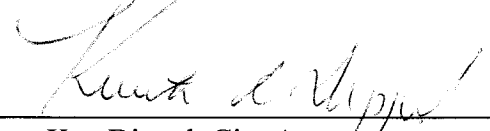


\_\_\_\_\_  
Mayor R. Scott Wheeler

ATTEST:

By:   
\_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Ken Dippel, City Attorney

Published 1/28/2000