

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 099-047

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS APPROVING LICENSE AGREEMENT BY AND BETWEEN THE CITY AND J-W OPERATING COMPANY TO USE A PORTION OF WRIGHT BROTHERS DRIVE FOR THE INSTALLATION AND USE OF A TELECOMMUNICATIONS CABLE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, J-W Operating Company (the "Company") desires to use a portion of Wright Brothers Drive, a public street located within the Town of Addison, to install a telecommunications cable to connect two tracts of land located along Wright Brothers Drive for the purpose of facilitating communication between the two tracts; and

WHEREAS, Section 16-39 of the City's Code of Ordinances provides that a person desiring to use any public street for a private utility use must first obtain a license from the City authorizing such use; and

WHEREAS, Section 16-41 of the Code provides that such a license must be granted by ordinance.

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

Section 1. The License Agreement by and between the City and the Company, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein, is hereby approved. The City Manager is authorized to execute the Agreement on behalf of the City.

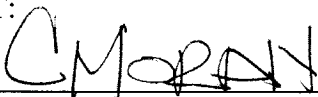
Section 2. This Ordinance shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 26th day of October, 1999.



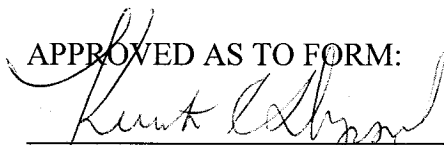
Scott Wheeler, Mayor

ATTEST:



Carmen Moran, City Secretary

APPROVED AS TO FORM:



Kenneth C. Dippel, City Attorney

located at 15505 and 15508 Wright Brothers Drive. The telecommunication services which may be provided between the said properties shall be and are limited to the following: audio, video, data, voice and signalling communications. The Cable shall be located as shown on Exhibit 1.

This license is subject and subordinate to the prior and continuing right of the City, its successors and assigns, and other public utilities having rights with respect to the use of Wright Brothers Drive, to use Wright Brothers Drive for the public benefit, the City for itself and other permitted users reserving full rights, consistent with the rights herein granted, to construct, reconstruct, maintain and operate existing and additional facilities upon, over and beneath Wright Brothers Drive.

2. Term. This License shall continue in force for a period of ten (10) years from the date of execution of this Agreement or earlier if terminated as provided hereinafter.

3. Identify Markers. Markers in a form and size satisfactory to the City shall be installed and constantly maintained by Company at the City's property lines or at such locations as the City may designate and shall be relocated or removed by Company upon request of the City. The absence of markers does not constitute a warranty by the City that there are no subsurface installations. The Company shall be responsible for determining and locating other utilities that may be in the area.

4. Cost. As consideration for the license and rights granted herein, Company shall pay the City an acceptance fee in the amount of \$1.00 per linear foot of streets bored or traversed, and One Thousand and No/100 Dollars (\$1,000.00) for each public street crossing, with such payment due on execution of this License; and an annual payment in the amount of One Thousand and No/100 Dollars (\$1,000.00) payable in advance with the first payment due on execution of this License. Each annual payment thereafter shall be due on or before the

anniversary date of this Agreement until the expiration of this License or this License is otherwise terminated as provided herein. Company shall bear the entire cost of construction, reconstructing, maintaining and operating the Cable, and will not allow any mechanic's or materialman's liens to be enforced against the City's property by reason of any such work.

5. Construction and Maintenance. The Cable shall be constructed, reconstructed and maintained in accordance with plans approved by the City. Approval by the City of this Agreement shall not constitute a warranty by the City that such plans conform with federal, state and/or local codes and regulations applicable thereto. The Company shall comply with all applicable laws or ordinances of the City, including, but not limited to, the securing of building and excavation permits, as necessary. All work upon or in connection with the Cable shall be done to the City's satisfaction at such times and in such manner as not to interfere with the use of any street or roadway. In the construction, reconstruction and maintenance of the Cable, the Company shall keep the Cable and the City's property in a neat and safe condition and in good order and operating condition, failing which, the City may do so at the Company's expense. If required by the City in its use of the City's property, Company, at its sole cost, shall reconstruct, relocate or alter the Cable. Except in an emergency, Company shall give the City at least five (5) days written notice of the day and hour it proposes to do any work on the Cable. Company shall bear responsibility for timely and complete repairs in the event of damage to the Cable from any cause whatsoever.

Company shall cooperate with the City in making any test it requires of any installation or condition which, in its judgment, may have an adverse effect on any of the facilities of the City. All costs incurred by the test, or any corrections thereof, shall be borne by Company.

6. Miscellaneous Obligations of Company.

A. Company shall maintain a complete set of “as built” plans of the Cable and shall furnish copies of the same to the City.

B. Company shall maintain a local agent who is familiar with the Cable and whose name and address shall be furnished annually to the City. The local agent shall be responsible for satisfying all information needs of the City.

7. Indemnification; Insurance. Company agrees to indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of actions, claims, lawsuits, judgments, damages, cost, expenses and fees (including attorney’s fees), for destruction of or damage to property, and for injury to or death of any person (including, but not limited to, the property and employees of each of the parties hereto) resulting from or arising out of, in whole or in part, any act or omission of the Company in (i) the use of any public street or right-of-way, or (ii) the use of the Cable, or (iii) the exercise of any of its rights, duties or obligations pursuant to or under this Agreement, including but not limited to the following:

A. the use of the premises by Company, its agents, employees or invitees; or

B. the construction, reconstruction, maintenance, presence, use or removal of the Cable.

If required by the City, Company shall provide evidence of insurance coverage in a form and amount satisfactory to the City, insuring Company’s liability hereunder.

8. Termination. Prior to the expiration of the term of this License Agreement, this Agreement shall terminate upon:

A. abandonment of the Cable or discontinuance of use thereof;

B. failure of Company to correct any default hereunder promptly after receipt of notice from the City;

C. upon thirty (30) days' written notice by the City to Company; or

D. upon thirty (30) days' written notice by Company to the City.

Upon the expiration or termination of this Agreement, the Company shall remove the Cable and restore the premises to the City's satisfaction, failing which the City may arrange to do so at Company's expense.

9. Notice. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed delivered three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows:

To the City:

P.O. Box 9010
Addison, Texas 75001-9010

Attn: Director of Public Works

To the Company:

J. W. Operating Company
P. O. Box 226406
Dallas, Texas 75222-6406

10. Applicable Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. This Agreement shall be performable and all compensation payable in Dallas County, Texas. Venue under this Agreement lies in Dallas County, Texas.

11. Assignment. The rights granted by this Agreement shall not be assigned, transferred, or otherwise conveyed by the Company without the express prior written consent of the City. Any required consent is to be evidenced by an ordinance or resolution of the City that fully recites the terms and conditions, if any, upon which consent is given.

12. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the City and the Company have executed this License Agreement on the day and year first set forth above.

TOWN OF ADDISON, TEXAS

J-W OPERATING COMPANY

By: _____
Ron Whitehead, City Manager

By: _____

ATTEST:

Its: _____

By: _____
Carmen Moran, City Secretary