

ORDINANCE NO. 2800

AN ORDINANCE GRANTING MESQUITE INDEPENDENT SCHOOL DISTRICT ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO INSTALL, CONSTRUCT AND MAINTAIN ITS COMMUNICATION SYSTEM, AND OTHER CONSTRUCTION AND APPURTENANCES NECESSARY THERETO, ALONG, ACROSS, ON, THROUGH, AND UNDER ALL PUBLIC STREETS, ALLEYS, PUBLIC GROUNDS AND WAYS AND UTILITY EASEMENTS WITHIN THE JURISDICTION AND CONTROL OF SAID CITY, UNDER REGULATIONS AND RESTRICTIONS, AND THE CITY SHALL RECEIVE COMPENSATION THEREFORE, ALL AS HEREIN PROVIDED; PRESCRIBING THE TERM AND EFFECTIVE DATE; PROVIDING THIS ORDINANCE BE CUMULATIVE, PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY.

WHEREAS, Mesquite Independent School District, a school district, hereinafter referred to as "MISD" is now seeking to expand, improve and modernize its communication system; and

WHEREAS, it is to the mutual advantage of both the City of Mesquite, Texas, hereinafter referred to as the "City" and MISD that an agreement should be entered into between MISD and the City establishing the conditions under which MISD shall operate install and maintain such communication system using the City rights-of-way and other public property in the City; and

WHEREAS, it is to the mutual advantage of both the City and MISD that an agreement should be entered into between MISD and the City, pursuant to which MISD will use the present and future streets, alleys, public grounds and ways, and utility easements within the control and jurisdiction of the City in connection with MISD's communication system;

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

SECTION 1. Construction and Maintenance of MISD Communication System

The City hereby grants to MISD, its successors and assigns, the right, privilege, and franchise to use its present and future streets, alleys, public grounds and ways and utility easements for the purpose of constructing and maintaining in the present and future streets, alleys, public grounds and ways, and utility easements within the control and jurisdiction of the City, communication equipment together with all necessary or desirable appurtenances (including underground conduits, transmission lines, and telephone and communication lines for its own use) for the purpose of providing communication links between all MISD facilities and such other locations as set forth herein which are in accordance with local, state and federal laws.

SECTION 2.            Communication System Relocation

The placement of MISD's facilities in the streets, alleys, public grounds and ways, and easements within the jurisdiction and control of the City shall interfere as little as reasonably practicable with the use of public streets, alleys, drainage systems and public ways and shall comply with all pertinent requirements of the National Electrical Code. Whenever by reason of the construction, reconstruction and maintenance of streets, alleys, storm sewers, water and sanitary sewer systems, it shall be deemed necessary by the governing body of the City or its designated representative to relocate the facilities of MISD, MISD shall, at no cost to the City, relocate such facilities as soon as reasonably practicable upon the City specifying the new location along said street. A reasonable time frame for the necessary relocation will be mutually agreed on by the City and MISD. In areas where there is joint use of the communication system by the City and MISD, as provided for herein, responsibilities set forth in this section shall be jointly shared by MISD and the City.

SECTION 3.            Supervision by City of Location of Poles and Conduits

All MISD facilities to be placed or relocated in the future in the City's streets, alleys, public grounds and ways shall be set so that they shall not interfere with the flow of water in any gutter, drain or other drainage facility, and so that the same shall not interfere with ordinary travel on the streets, and so that the same shall interfere as little as practical with ordinary travel on sidewalks and bikeways, and so that they shall not compromise public safety, especially at public street intersections. The MISD must notify the City prior to any major construction work within the paved portion of any public street, alley, public grounds and ways. This agreement expressly contemplates and requires that all facilities of the communication system located in the City right-of-way and other City property shall be located underground unless otherwise specifically approved by the City. In no event shall any facility interfere with traffic or otherwise create hazardous conditions to life or property.

SECTION 4.            Streets to be Restored to Good Condition

The surfaces of any street, alley, or public grounds and ways disturbed by MISD in building, constructing, renewing or maintaining it's communication system shall be restored within a reasonable time after the completion of the work to as good condition as before the commencement of work to the reasonable satisfaction of the City. No street, alley, or public grounds and ways shall be encumbered for a longer period than shall be reasonably necessary to execute the work. MISD shall install traffic control devices in accordance with lawful City or State standards, when such activity requires the full or partial closure of any vehicular travel way. In areas where there is joint use of the communication system by the City and MISD, as provided for herein, responsibilities set forth in this section shall be jointly shared by MISD and the City.

SECTION 5.            Operation and Maintenance of Communication System

The MISD shall maintain its system in reasonable operating condition at all times during the continuance of this agreement. An exception to this condition is automatically in effect when MISD's system is interrupted, impaired or rendered inoperable by fires, strikes, riots or other occurrences beyond the reasonable control of MISD, or by storms, floods or other casualties, in any of which events MISD shall do all things, reasonable within its power to restore its system. Nothing contained in this Section 5 or elsewhere herein shall be construed to create any liability for the benefit of third parties, it being the intent of the parties that this agreement is solely for the benefit of the parties hereto.

SECTION 6.            Compensation to the City

In consideration of the grant of said right, privilege, and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said streets, alleys, public grounds and ways, and utility easements and in lieu of any and all taxes, fees, charges or assessments of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to impose by state law, MISD shall convey to the City, by one or more bills of sale, the number of Mbts needed for the private use by City in connection with its police, fire, alarm and communication systems. The number of Mbts to be conveyed shall be determined and negotiated between the City and MISD from time to time upon written request by City, and MISD shall convey one or more such Mbts to the City based upon the determination of need at the time of each request. Each request shall designate the location or locations desired by City for each such increment of communications capacity. At the time each such bill of sale is executed, the City shall reimburse MISD an amount of money equal to its actual, booked installation cost for such Mbts capacity. The City's acquisition and subsequent use of said capacity shall be subject to the requirements of the National Electrical Code and the City agrees, further, that its use of its capacity shall be performed in such a manner as not to interfere with or create an undue hazard in the operation of MISD's system.

SECTION 7. Term of this Ordinance

This ordinance and the agreements contained herein shall be in full force and effect for a period beginning with the date of passage of this ordinance and ending thirty (30) years after such date.



SECTION 8. Indemnity

MISD agrees to and shall indemnify and hold harmless the City, its officers, agents, contractors and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or occasioned by the construction, reconstruction, maintenance, operation or repair of MISD's communication system, or by the conduct of MISD's business, in connection with such system, in the City. MISD further agrees to handle and defend at its own expense, on behalf of the City and in the City's name, any claim or litigation in connection with any injury, death or damage herein indemnified. The City, however, reserves the right to compromise and defend same to the extent of its own interest. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this agreement shall be solely for the benefit of the parties hereto.

SECTION 9. No Exclusive Privileges Conferred by this Ordinance

Nothing herein contained shall be construed as giving to the MISD any exclusive privilege.

SECTION 10. Successors and Assigns

The rights, powers, limitation, duties, and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION 11. MISD Subject to Other Regulations

MISD's property and operations shall be subject to all lawful rules and regulations that have been or will be promulgated by the City which are not inconsistent with this ordinance or State or Federal law.

SECTION 12. Independent Contractor

When performing under this agreement, MISD's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of the City in the performance of this agreement. No term or provision of, or act of MISD or the City under this agreement shall be construed as changing that status.

When performing under this agreement, the City's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of MISD in the performance of this agreement. No term or provision of, or act of, the City or MISD under this agreement shall be construed as changing that status.

SECTION 13. Ordinance Cumulative

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 14. Effect of Invalidity

If any provision, section, subsection, sentence, clause or phrase of this ordinance is for any reasons held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City in adopting this ordinance that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this ordinance are declared to be severable.

SECTION 15. Governmental Immunity

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

SECTION 16. Rights Reserved

Neither party to this agreement waives its respective rights to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this agreement, including seeking injunctive relief in a court of competent jurisdiction.

SECTION 17. Meeting Open to the Public

It is hereby officially found and determined that the meeting or meetings at which this ordinance is passed is open to the public, as required by law, and that public notice of the time, place and purpose thereof was posted, as required by law.

SECTION 18.      Effective Date

This ordinance shall become effective from and after its passage as provided by law and acceptance by MISD. If MISD does not deliver a written acceptance hereof to the City within sixty (60) days of the date of passage, this ordinance shall be null and void.

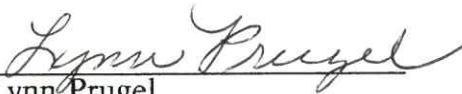
PASSED on 1st reading this 20th day of January, 1992.

PASSED on 2nd reading this 2nd day of March, 1992.


PASSED AND APPROVED on 3rd and final reading this 16th day of March, 1992, at a regular meeting of the City Council of the City of Mesquite, Texas.

  
\_\_\_\_\_  
Cathye Ray  
Mayor

ATTEST:

  
\_\_\_\_\_  
Lynn Prugel  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B.J. Smith  
City Attorney