

ORDINANCE NO. 4942

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, GRANTING MESQUITE INDEPENDENT SCHOOL DISTRICT ("MISD"), AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE TO INSTALL, CONSTRUCT, AND MAINTAIN ITS COMMUNICATION SYSTEM, INCLUDING BUT NOT LIMITED TO, FIBER OPTIC LINES AND OTHER CONSTRUCTION AND APPURTENANCES NECESSARY THERETO, ALONG, ACROSS, ON, THROUGH, AND UNDER ALL PUBLIC STREETS, ALLEYS, PUBLIC GROUNDS AND RIGHTS-OF-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 OF THE FRANCHISE AGREEMENT; PROVIDING A CONFLICTS RESOLUTION CLAUSE; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, pursuant to Mesquite, Texas, City Charter ("**Mesquite City Charter**"), Article III, [Section 18](#) (Franchises and Special Privileges), the governing body ("**City Council**") of the City of Mesquite, Texas ("**CITY**"), may grant the right, privilege, and franchise to install, construct, and maintain communication systems, including but not limited to, fiber optic lines and other construction and appurtenances necessary thereto, along, across, on, through, and under all public streets, alleys, public grounds and rights-of-ways, and utility easements within the jurisdiction and control of said CITY; and

WHEREAS, pursuant to Mesquite City Charter, Article III, [Section 18](#), said franchise may be granted for a period of time not to exceed thirty (30) years (unless submitted to the vote of the legally qualified voters of the CITY), and any such franchise, grant, or privilege shall provide for adequate compensation or consideration therefor to be paid to the CITY; and

WHEREAS, Mesquite City Charter, Article III, [Section 18](#), further provides that said right, privilege, and franchise shall be granted by an ordinance upon approval by a majority of the City Council, after said ordinance having been read in full at three (3) regular meetings of the City Council; and

WHEREAS, pursuant to [Ordinance No. 2800](#), adopted by the City Council on March 16, 1992, Mesquite Independent School District, a school district hereinafter referred to as "**MISD**" was granted the right, privilege, and franchise to expand, improve, and modernize its communication system for a term of thirty (30) years, and said Franchise expires on MARCH 16, 2022; and

WHEREAS, the City and MISD each run fiber "backbones" together, but in separate conduits across the CITY, and this arrangement saves the CITY and MISD money in line locate services because each quarter cost sharing is calculated and applied; and

WHEREAS, this Ordinance, upon acceptance by MISD, grants the continuation of the right, privilege, and franchise to MISD to install, construct, and maintain communication systems, including but not limited, to fiber optic lines and other construction and appurtenances necessary thereto, as herein further described in accordance with the rules and regulations identified in Mesquite City Code, CHAPTER 15, [ARTICLE III](#) "Rights-of-Way Rules and Regulations; Registration, Permit and License Requirements" for another term of thirty (30) years, and said Franchise will expire at 11:59 PM on MARCH 7, 2052; and

WHEREAS, it is the intent of the City Council of the City of Mesquite, Texas ("City Council") to protect the public health, safety, and welfare; and

WHEREAS, the CITY is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to Article 11, [Section 5](#) of the Texas Constitution and [Chapter 9](#) of the Texas Local Government Code; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, [Section 51.072\(a\)](#); and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the CITY to grant the franchise herein provided.

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

This Franchise Agreement ("**FRANCHISE AGREEMENT**") is made and entered into by and between Mesquite Independent School District ("**MISD**"), an independent school district, and the City of Mesquite, Texas, a Home-Rule Municipal Corporation (hereinafter referred to as "**CITY**"). For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

SECTION 1. **Recitals Incorporated.** The City Council hereby finds and determines the recitals made in the preamble of this ordinance are true and correct, and hereby incorporates such recitals here in the body of this ordinance as if copied in their entirety.

SECTION 2. **Authority.** Franchises and special privileges may be granted by the City Council pursuant to Mesquite City Code, Mesquite City Charter, Article III, [Section 18](#).

SECTION 3. **Franchise Granted to MISD.**

- 3.01.** The CITY hereby grants **MISD** the right, privilege, and franchise (hereinafter referred to as "**franchise**") to install, construct, and maintain its communication system, including but not limited to, fiber optic lines and other construction and appurtenances necessary thereto, along, across, on, through, and under all present and future public streets, alleys, public grounds and rights-of-ways, and utility easements within the jurisdiction and control of the CITY in accordance with the CITY's rules, regulations, and restrictions.
- 3.02.** In order to accept the franchise granted herein, MISD must evidence its written acceptance of the terms and conditions of this FRANCHISE AGREEMENT in accordance with SECTION 12 (MISD Acceptance).

SECTION 4. **Rights Reserved.**

- 4.01.** By entering into this FRANCHISE AGREEMENT, the CITY does not in any manner surrender or waive its regulatory or other authority or rights pursuant to the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers pursuant to present or future ordinances of the CITY. SEE Mesquite City Charter, Article III, [Section 2](#) (Power to enact ordinances); [Section 18](#) (Franchises and special privileges); [Section 25](#) (Compromise and settlement of claims and lawsuits); and [Section 28](#) (Additional enumerated powers; penalties for violations of ordinances).
- 4.02.** Likewise, MISD's acceptance of the terms of this FRANCHISE AGREEMENT shall in no way affect or impair MISD's rights, obligations, or remedies under any federal, State or local law, or regulation.

SECTION 5. **Rules, Regulations, and Restrictions.**

- 5.01.** MISD shall be subject to all rules, regulations, and restrictions as identified in the Mesquite City Charter and Mesquite City Code.
- 5.02.** Mesquite City Code, CHAPTER 15, [ARTICLE III](#) "Rights-of-Way Rules and Regulations; Registration, Permit, and License Requirements" shall apply to the use and/or occupancy of the rights-of-way and other City property by MISD under the authority granted by this FRANCHISE AGREEMENT to the same extent as if such Article were copied verbatim in this Sub-Section.

SECTION 6. **Compensation / Consideration.**

- 6.01.** Pursuant to Mesquite City Charter, Article III, [Section 18](#), a franchise, grant, or privilege shall provide for adequate compensation or consideration therefor to be paid to the CITY.
- 6.02.** 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 rights-of-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:
1. Notify the CITY, with at least thirty (30) days written notice, when MISD plans to install, construct, expand, or maintain its communications systems so as to provide the CITY a shared opportunity to do the same with its communications systems.
 2. Provide the CITY with the opportunity to utilize shared line locate services and share said costs with MISD.
 3. Any provision of compensation and/or consideration identified in this SECTION 6 and utilized or exercised by CITY and/or MISD shall be specifically determined and negotiated by the CITY and MISD from time to time and documented in writing.

SECTION 7. **Notices.** Notices required to be in writing shall be delivered to the parties identified below and in accordance with Mesquite City Code, CHAPTER 15, ARTICLE III, Division 2, [Section 15-202](#) (Notices).

CITY
City of Mesquite, Texas
George A. Venner, Sr. Municipal Center
ATTN: CITY MANAGER
1515 North Galloway Avenue
Mesquite, Texas 75149

With copy to:
City of Mesquite, Texas
George A. Venner, Sr. Municipal Center
ATTN: CITY ATTORNEY'S OFFICE
1515 North Galloway Avenue
Mesquite, Texas 75149

MISD
Mesquite Independent School District
Administration Building
ATTN: SUPERINTENDENT
3819 Towne Crossing
Mesquite, Texas 75150

With copy to:
Mesquite Independent School District
Administration Building
ATTN: ATTORNEY FOR MISD
3819 Towne Crossing
Mesquite, Texas 75150

SECTION 8. **No Exclusive Use or Privileges Conferred.**

- 8.01.** Pursuant to Mesquite City Charter, Article III, [Section 18](#) (e), no franchise grant shall ever be exclusive.
- 8.02.** Nothing herein contained shall be construed as giving to MISD any exclusive use or privileges. The rights and privileges granted to MISD by this FRANCHISE AGREEMENT are not to be considered exclusive and CITY hereby expressly reserves the right to grant, at any time, like privileges and rights as it may see fit to any other person or corporation.

SECTION 9. **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 10. **Severability Clause.** Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, the Mesquite City Code, as hereby or previously amended, or the Mesquite Zoning Ordinance, as hereby or previously amended, which shall remain in full force and effect.

SECTION 11. **Conflicts Resolution Clause.** The provisions of Mesquite City Code, CHAPTER 15, [ARTICLE III](#) "Rights-of-Way Rules and Regulations; Registration, Permit and License Requirements" shall apply to the use and/or occupancy of the rights-of-way by MISD under the authority granted by this FRANCHISE AGREEMENT as if fully set forth in this FRANCHISE AGREEMENT and ordinance. The express terms of [ARTICLE III](#) will prevail over conflicting or inconsistent provisions in this FRANCHISE AGREEMENT and ordinance.

SECTION 12. **MISD Acceptance.**

- 12.01.** In order to accept the franchise granted herein, MISD must evidence its written acceptance of the terms and conditions of this FRANCHISE AGREEMENT by executing and delivering to the CITY a letter substantially in conformance with the form attached hereto as **EXHIBIT A** and incorporated herein.
- 12.02.** If MISD does not deliver a valid written acceptance, (as identified in **EXHIBIT A**) to the City Secretary, dated not more than sixty (60) days of the date of final passage and approval of this ordinance, this ordinance shall be null and void. The date of final passage and approval of the ordinance shall be considered Day Zero (0).

- 12.03.** The City Secretary, or his/her designee, is authorized to attach the executed written acceptance by MISD as **EXHIBIT B** to this ordinance if said written acceptance by MISD is dated not more than sixty (60) days after the date of final passage and approval of this ordinance.

SECTION 12. **Term.**

- 13.01.** Pursuant to Mesquite City Charter, Article III, [Section 18](#), a franchise may be granted for a period of time not to exceed thirty (30) years (unless submitted to the vote of the legally qualified voters of the CITY).

- 13.02.** The term of this FRANCHISE AGREEMENT and ordinance shall be for approximately THIRTY (30) YEARS. SEE SECTION 13 (Effective Date) and SECTION 17 (Franchise Expiration Date).

SECTION 14. **Publication.** This ordinance, or the descriptive caption thereof, shall be published in the City's official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

SECTION 15. **Effective Date.** As provided by Mesquite City Charter, Article III, [Section 18](#); Article IV, [Section 24](#), this Ordinance and grant of franchise (1) shall become effective from and after its final passage and approval by the City Council and no less than five (5) days after publication thereof; and (2) only upon and subject to the timely filing with the City Secretary of MISD's written acceptance of the terms and conditions of the FRANCHISE AGREEMENT set forth herein in this Ordinance.

SECTION 16. **Ordinance No. 2800 Superseded and Replaced.** Upon the effective date of this Ordinance, this Ordinance will supersede and replace [Ordinance No. 2800](#), as adopted by the City Council on March 16, 1992, and as may have been amended from time to time.

SECTION 17. **Franchise Expiration Date.** This ordinance and grant of franchise shall expire at 11:59 PM on MARCH 7, 2052.

SECTION 18. **Three Readings of Ordinance Required Prior to Approval.**

- 18.01.** Pursuant to Mesquite City Charter, Article III, [Section 18](#), any rights, privileges, and franchises as herein provided shall only be granted by an ordinance upon approval by a majority of the City Council, *after* said ordinance has been read in full at three (3) REGULAR MEETINGS of the City Council.

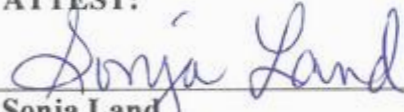
18.02. The readings of this ordinance shall be conducted at the following regular meetings of the Mesquite City Council:

1. **1st READING on the 7th DAY of FEBRUARY, 2022.**
2. **2nd READING on the 21st DAY of FEBRUARY, 2022.**
3. **3rd READING on the 7th DAY of MARCH, 2022.**

PASSED AND APPROVED ON FIRST READING THIS 7TH DAY OF FEBRUARY, 2022, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS.


Daniel Aleman, Jr.
Mayor

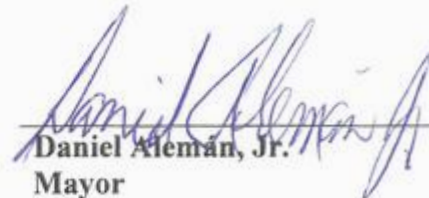
ATTEST:


Sonja Land
City Secretary

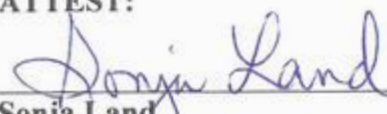
APPROVED AS TO LEGAL FORM:


David L. Paschall
City Attorney

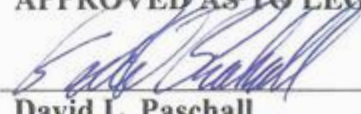
PASSED AND APPROVED ON SECOND READING THIS 21ST DAY OF FEBRUARY, 2022, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS.


Daniel Aleman, Jr.
Mayor

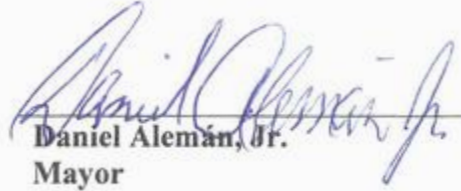
ATTEST:


Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

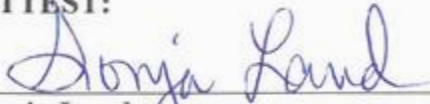

David L. Paschall
City Attorney

FINALLY PASSED AND APPROVED ON THE THIRD AND FINAL READING THIS
7TH DAY OF MARCH, 2022, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF MESQUITE, TEXAS.



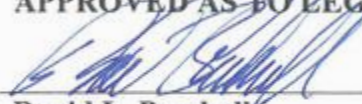
Daniel Aleman, Jr.
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A

To Ordinance No. 4942

******* TO BE EXECUTED BY MISD *******

Acceptance Document

Mesquite Independent School District (MISD)

- Execute (4) Originals:
- City Secretary
 - City Finance Dept.
 - MISD Copy # 1
 - MISD Copy # 2

ACCEPTANCE BY MESQUITE INDEPENDENT SCHOOL DISTRICT'S BOARD OF TRUSTEES
OF TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT
WITH CITY OF MESQUITE, TEXAS,
REGARDING MISD'S COMMUNICATIONS SYSTEMS

City of Mesquite, Texas
Attention: City Secretary
P.O. Box 850137
Mesquite, Texas 75185-0137

RE: MISD's Acceptance of Terms and Conditions of FRANCHISE AGREEMENT;
Ordinance No. _____.

This letter certifies that Mesquite Independent School District, a school district hereinafter referred to as "MISD" and governed by its Board of Trustees, accepts and agrees to be contractually bound by the terms and conditions of the FRANCHISE AGREEMENT with the City of Mesquite, Texas ("CITY"), authorized by Mesquite City Council on the _____ day of _____, 2022, Ordinance No. _____, for MISD's right, privilege, and franchise to install, construct, and maintain its communication system including but not limited to fiber optic lines, and other construction and appurtenances necessary thereto, along, across, on, through, and under all present and future public streets, alleys, public grounds, and rights-of-ways, and utility easements within the jurisdiction and control of the CITY in accordance with the City's rules, regulations and restrictions as identified in the Mesquite City Charter, Mesquite City Code, and specifically Mesquite City Code, CHAPTER 15, [ARTICLE III](#) "Rights-of-Way Rules and Regulations; Registration, Permit, and License Requirements."

This document shall be considered a valid written acceptance if executed not more than sixty (60) days from the date of final passage and approval of the City's ordinance and placed on file with the City Secretary. The date of final passage and approval of the City's ordinance shall be considered Day Zero (0).

DATED THIS _____ DAY OF _____, 2022.

BY: _____
Dr. David Vroonland,
MISD Superintendent

CITY SECRETARY

TIMELY FILED IN THE CITY SECRETARY'S OFFICE ON THIS _____ DAY OF _____, 2022,
THE "EFFECTIVE DATE" OF ORDINANCE NO. _____.

MISD AUTHORIZATION

RESOLUTION NO.: _____
DATE BOARD OF TRUSTEES APPROVED: _____
AGENDA ITEM NUMBER: _____

CITY COUNCIL AUTHORIZATION

ORDINANCE NO.: _____
DATE OF FINAL PASSAGE & APPROVAL: _____
AGENDA ITEM NUMBER: _____

EXHIBIT B

To Ordinance No. 4942

******* TO BE ATTACHED *******

Executed Acceptance of Terms & Conditions of Franchise Agreement
by
Mesquite Independent School District (MISD)

- Execute (4) Originals:
- City Secretary
 - City Finance Dept.
 - MISD Copy # 1
 - MISD Copy # 2

ACCEPTANCE BY MESQUITE INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES
OF TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT
WITH CITY OF MESQUITE, TEXAS,
REGARDING MISD'S COMMUNICATIONS SYSTEMS


City of Mesquite, Texas
Attention: City Secretary
P.O. Box 850137
Mesquite, Texas 75185-0137

RE: MISD's Acceptance of Terms and Conditions of FRANCHISE AGREEMENT;
Ordinance No. 4942

This letter certifies that Mesquite Independent School District, a school district hereinafter referred to as "MISD" and governed by its Board of Trustees, accepts and agrees to be contractually bound by the terms and conditions of the FRANCHISE AGREEMENT with the City of Mesquite, Texas ("CITY"), authorized by Mesquite City Council on the 7th day of March, 2022, Ordinance No. 4942, for MISD's right, privilege, and franchise to install, construct, and maintain its communication system including but not limited to fiber optic lines, and other construction and appurtenances necessary thereto, along, across, on, through, and under all present and future public streets, alleys, public grounds, and rights-of-ways, and utility easements within the jurisdiction and control of the CITY in accordance with the City's rules, regulations and restrictions as identified in the Mesquite City Charter, Mesquite City Code, and specifically Mesquite City Code, CHAPTER 15, ARTICLE III "Rights-of-Way Rules and Regulations; Registration, Permit, and License Requirements."

This document shall be considered a valid written acceptance if executed not more than sixty (60) days from the date of final passage and approval of the City's ordinance and placed on file with the City Secretary. The date of final passage and approval of the City's ordinance shall be considered Day Zero (0).

DATED THIS 11 DAY OF APRIL, 2022.

BY: 

Dr. Angel Rivera,
Superintendent

CITY SECRETARY

TIMELY FILED IN THE CITY SECRETARY'S OFFICE ON THIS THE 7TH DAY OF MARCH, 2022, THE "EFFECTIVE DATE" OF ORDINANCE NO. 4942.

MISD AUTHORIZATION

RESOLUTION OR ORDER NO.: _____
DATE BOARD OF TRUSTEES APPROVED: 4/11/2022
AGENDA ITEM NUMBER: F.2

CITY COUNCIL AUTHORIZATION

ORDINANCE NUMBER: 4942
DATE OF FINAL PASSAGE & APPROVAL: MARCH 7, 2022
AGENDA ITEM NUMBER: 5