

AMENDMENT NO. ONE
WIRED TELECOMMUNICATIONS LICENSE AND
RIGHT-OF-WAY USE AGREEMENT

This Amendment is entered into between the City of El Mirage, an Arizona Municipal Corporation (“City”) and Wyerd Connect LLC, a Delaware Limited Liability Company (“Licensee”) to amend the agreement dated October 19, 2021, between the City and Licensee related to the granting of a license for wired telecommunication facilities in the City right-of-way (“License”). The City and Licensee are referred to as the “Parties” in this Amendment.

RECITALS:

1. The City and Licensee entered into the License to allow the Licensee to install, operate, maintain, and repair cable containing bundles of multiple optical fibers within the public right-of-way for the purpose of providing telecommunication services.
2. The License contains a five-year term commencing October 19, 2021, and terminating October 19, 2026, unless extended by the mutual written consent of the parties.
3. The Parties desire to amend the License to allow micro-trenching within certain roadways within the City.
4. Licensee acknowledges that the City will require as-built drawings of Licensee’s Facilities upon construction and that any installation of new wired facilities are required to follow the terms of the License and City Codes, notes, details, standards and regulations governing work in the public right-of-way.

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises and agreements of the Parties, the City and Licensee agree to amend the License as follows:

1. Paragraph 2.1 “Maintenance of Licensee’s Facilities” is amended to include the requirement of the Licensee to obtain an Annual Maintenance Permit from the City in order to perform maintenance activities.
4. Paragraph 2.9 “Construction Standards” is amended to include requirements set forth in this Amendment Exhibit B in order to allow micro-trenching, which also includes additional requirements as provided in Exhibit B to the License, referred to as “Micro-trenching Specifications, Notes and Details.”

All other provisions of the License shall remain unchanged.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the License as of the day last written below.

EL MIRAGE:

LICENSEE:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

ATTEST:

Jill A. Boltz, City Clerk

APPROVED AS TO FORM:

Justin Pierce, City Attorney
Pierce Coleman PLLC

EXHIBIT B – MICRO-TRENCHING SPECIFICATIONS, NOTES AND DETAILS

2.9.1. Micro-Trenching. Upon request from the Licensee, the City may allow micro-trenching. Micro-trenching is a construction technique for placing micro-conduits and fiber optic cables. The advantages of micro-trenching must be balanced with the impact that its use may have on public highways defined by Arizona Revised Statutes and City Code. Micro-trenching may not be suitable for all types of roadways. Deployment will depend on the composition of the road and the location of the buried infrastructure. If micro-trenching is allowed, all Sections of this License must be adhered to.

2.9.2 Construction. Licensee must follow all City of El Mirage Notes and Details for micro-trenching. All work performed shall be completed in compliance with the latest version of the Uniform Standard Specifications and Details for Public Works Construction published by Maricopa Association of Governments (MAG), any City supplements to MAG, the City's Design & Development Standards Manual (DDSM) and City supplemental Notes and Details. Licensee shall retain an independent testing company, approved by the City at its reasonable discretion, to test all materials used for restoring the rights-of-way. The testing company and materials testing methods are subject to, and shall be done in accordance with MAG Standards and City supplements to MAG. The work cannot be accepted until all testing results are reviewed and approved by the City. Material testing does not apply to materials that will be owned by the Licensee.

Conduit restraining may be required due to shallow depth. Conduit restraining shall be completed by backer rod to ensure conduit adheres to the bottom of the trench. Each portion of backer rod used shall not exceed 6-inches in one location and no more than 12-inches total of backer rod shall be used within a 5-foot section of trench. No metal shall be placed in a trench to restrain the conduit.

Curb markers shall be placed on the curb to mark the location of the lateral service. Conduit shall be installed separate from other existing utilities. For City utilities (water, wastewater, interconnect conduit, etc.), the installation of the small diameter conduit shall maintain a 12-inches vertical separation and a 6-foot horizontal separation.

After work is complete, the City shall notify the Licensee in writing if the backfill and/or over band seal settles at any time, causing subsidence in the pavement ¼-inch or more, vertically measured from the adjacent road surface, per MAG Section 336.2.4.1. During the entire term of the License Agreement, the Licensee is responsible to safeguard and immediately repair subsidence once it is determined that the subsidence was caused or as a result of the construction by the Licensee as noted in Paragraphs 2.18 and 6.1.

2.9.3 Pavement Matching Modifications. The slurry seal coat as required by MAG Section 336 will not be required for the Licensee installing the micro-trench path, 10-inch diameter or small core for junction with service lateral, and 10-inch diameter or smaller potholes that reside in the micro-trench path due to the asphaltic sealant material, also known as the over band seal, placed over the entire top of the micro-trench, lateral service, and potholes. The over band seal must meet MAG Specification 337 to be exempt from MAG Specification 336.2.2.

Micro-trenching will be subject to comply with the pavement restoration requirements for cutting pavement as outlined in Section 151.009 of the City Code. The City requires all pavement cut requirements to have an approved permit and be restored in accordance with City standards and specifications. Section 151.009 and the City's latest version of the Fee Schedule establishes a requirement to pay pavement restoration fees for cutting pavement with the established rate structure is based on pavement age and size of cut or pavement disturbance. For additional information, please review the City's Pavement Cut Policy within the DDSM. All micro-trenches placed within the limits of the City's bike lane will require the contractor to mill and pave the bike lane and replace all markings within the limits of the micro-trench.

2.9.4 Notes and Details. All micro-trenching must strictly adhere to the notes and details provided in City Details EM-172-1 through EM-172-8. The City Engineer or designee may, in his/her sole discretion, approve alternative requirements and specifications based on specific findings that the proposed alternative: i) will provide an equivalent level of service for the health, safety and welfare for the general public, and ii) adequately protects public and private property, and iii) would not unreasonably increase the City's future maintenance or replacement costs; and iv) is not otherwise contrary to public interest.

2.9.5 City Roadway Projects and Maintenance. When the City has a project that includes any roadway reconstruction, alteration, widening, maintenance, etc. in the vicinity of a Facility installed via micro-trenching by the Licensee, the City will alert the Licensee as soon as reasonably practicable to allow the Licensee to plan for the removal and/or relocation of the Facility. Licensee shall remove and/or relocate at no expense to the City any Facilities or other encroachment installed or maintained in, on or under any public place or ROW whenever directed to do so by City.

Within 90 days after service of notice by the City, Licensee shall remove and/or relocate the designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the 90-day period, Licensee shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City. City agrees to cooperate with Licensee to identify alternate locations where available within the ROW.

2.9.6 Projects by Others. The City has no obligation to notify public or private entities about the Licensee's Facilities within the ROW. The Licensee is solely responsible for ensuring that its Facilities are properly blue-staked or otherwise marked in the field prior to the start of any construction.

2.9.7 Fees. The fees for micro-trenching are the same as those outlined in Section 4 of the License including the cost per linear foot of trench referred to in Paragraph 4.3 and the cost adjustments in Paragraph 4.6.