CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: **DATE: May 4, 2020**

Master Conduit License and Sharing Agreement
for the use of the City of West Des Moines owned and operated Conduit

FINANCIAL IMPACT: Revenue in the amount of approximately $9/ LF.

BACKGROUND:

The City, as part of its 2036 Plan listed "Double Down on Technology" or ubiquitous broadband access throughout the City as a high priority.

CMO and Engineering Staff have consulted with our broadband/fiber consultant David Lyons, as well as the engineering team at H.R. Green and many of our local Internet Service Providers (ISP) and Telcom's; to develop and design a shared conduit program designed to preserve ROW for future public safety needs and reduce barriers to entry in our market.

The premise of this concept is to coalesce the many Telcom's and ISP's operating in West Des Moines into one joint-utility-trench (JUT) or a bank of conduit ductwork with the hopes of (1) preserving ROW for future public safety needs (2) utilizing the City's existing conduit network and (3) fostering a ubiquitous broadband network throughout our community.

Staff and consultants have met extensively over the last two years with local providers to ensure construction specifications are suitable and meet private sector needs. Currently the City is installing this conduit system as part of a pilot project in 4 major arterial roadway projects (Grand Avenue east of S. Jordan Creek Parkway, Mills Civic west of JCP, Veterans Parkway). This item involves the segment in the Mills Civic and 88th St extension.

ISP's or Telcom's wishing to lease (or purchase) space in the city-owned conduit can complete a Master Service Agreement which will be approved by Council at the onset of the relationship and subsequent participation or lease interest by the same ISP can be completed quickly and administratively with a short Project Statement.

The lease rate is dependent on the bid package price of the completed conduit project. It is a rate which we hope will incentivize participation without requiring it. So far, we have interest from several legacy providers in West Des Moines, the first is MediaCom. Revenues will be kept in an enterprise account and used to install more conduit and further this project goal.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: Approval of the Master Conduit Service Agreement for MediaCom Communications and City of West Des Moines.

Lead Staff Member: Jamie Letzring and Brian Hemesath

STAFF REVIEWS

https://wdmiowa-my.sharepoint.com/personal/jamie_letzring_wdm_iowa_gov/Documents/Pinkie/pinkie-5-4-20-Mediacom Fiber Agreement (1) djl.doc

Department Director	
Appropriations/Finance	TS
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	

MASTER CONDUIT LICENSE AND SHARING AGREEMENT
for the use of the City of West Des Moines owned and operated Conduit

This Master Conduit License Agreement ("Agreement") is entered into this _____ day of _____, 2020 by and between MCC Iowa LLC ("MCC"), a Delaware limited liability company, and the City of West Des Moines, Iowa ("the City"), a municipality organized and existing under the laws of the State of Iowa. The City and MCC are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

Background

WHEREAS, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

A. MCC, a private limited-liability company authorized to provide communications or telecommunications services in the State of Iowa, will be the owner of certain fiber optic cables comprising a component of its communications or telecommunications facilities network that MCC plans to install within the public rights of way ("ROW") and in conduit under the ROW within the geographic boundaries of the City for the provision of communications or telecommunications service (the "Network");

B. The City is a political subdivision of the State of Iowa with jurisdiction over the ROW for certain purposes including the intended uses of MCC and is the owner of certain conduits located within the ROW;

C. The intent of the Parties is to increase broadband access to businesses and residents of West Des Moines in a manner that reduces costs of investment, speeds time to market and preserves public ROW for future public safety needs;

D. The City is entitled to manage the public ROW and to require fair and reasonable terms of process and compensation based on principles of ROW preservation and cost recovery as a condition to allowing MCC access to the ROW;

E. The City and MCC desire to enter into an agreement to govern the terms and conditions under which the City will reserve certain conduits or space within its conduits to accommodate the installation and maintenance of MCC's fiber optic cable for the use of MCC as required by MCC in connection with implementation of the Network installation in the ROW. Said Conduit, subject to this Agreement, will be specifically identified in a supplement to this Agreement approved in writing by both Parties.

Agreement Terms and Conditions

NOW **THEREFORE,** in consideration of the promises and mutual covenants contained herein, the City and MCC for valuable consideration, the sufficiency of which is hereby acknowledged, hereby agree as follows:

1. Definitions

For the purpose of this Agreement, the following terms when used herein shall have the

following meanings:

(i) "Access Point" means a Manhole, Vault, Handhole, Junction Box or Pedestal through which the City Conduit may be accessed for the purposes of running and accessing fiber optic cable.

(ii) "Authorized Contractors" means third party contractors (whether independent or affiliated with the City) that have been approved and authorized by the City to utilize Access Points and to make splices or perform other work on the fiber optic cable as provided for in this Agreement.

(iii) "City Conduit" means the physical multiple conduit manifold system owned by the City and installed within City right-of-way through which fiber optic cable is run from Access Point to Access Point throughout the geographic area of the City.

(iv) "Conduit" refers to the physical pipe or tube through which fiber optic cable is run from Access Point to Access Point throughout the geographic area of the City.

(v) "Fiber Optic Cable" means optical fiber components to be installed by either MCC or the City in the Licensed Conduit identified and agreed to within an approved Supplement to this Agreement.

(vi) "Fiber Route Map" means the map of the composite routes of the various Fiber Segments comprising the fiber cabling to be installed as part of the Network. The Fiber Route Map shall be updated and provided in "As-Built" form as necessary to reflect modifications to the Fiber Segments or additional Fiber Segments comprising MCC Cable made in accordance with the Supplements to this Agreement.

(vii) "Fiber Segment" means a continuous run of multi-strand fiber optic cable covering a portion of the fiber cable route.

(viii) "Handhole" means a buried box, with a lid that is even with the surface of the ground, used to store, terminate, splice or transfer fiber optic cable and access conduit.

(ix) "Junction Box" means a box where fiber optic cable splices and connections are made and accessed and to access conduit.

(x) "Licensed Conduit" means all or a portion of City Conduit specifically identified in an approved Supplement to this Agreement, in which space shall be reserved and/or designated for MCC to "pull" or "run" and then maintain fiber' optic cable in accordance with and subject to the terms of this Agreement.

(xi) "Manhole" means a subsurface enclosure which qualified personnel may enter and use for the purpose of installing, operating and maintaining facilities.

(xii) "Pedestal" means an above ground structure used to store, terminate, splice or transfer, or access conduit containing fiber optic cable.

(xiii) "Underlying Rights" means with respect to the Public ROW the exact legal interest of the City in any portion of the ROW being made available to MCC whether that right be by license, easement, or fee simple interest.

(xiv) "Vault" means an underground structure used to store, terminate, splice or transfer, or access conduit containing fiber optic cable.

2. License

2.1 License Grant

Subject to the terms, conditions and limitations set forth herein, the City hereby grants to MCC a license and right for the use of Licensed Conduit for the installation and maintenance of fiber optic cable owned or employed by MCC. The duration of the foregoing license shall continue in perpetuity so long as the City Conduit remains in place and is in use by the City and its successors in interest and assigns, but nothing herein shall obligate the City to continue to maintain and operate the City Conduit or any portion thereof or to maintain any attachment rights related thereto during any periods in which the City is not otherwise using or planning to use the City Conduit for the provision of services to the City's customers. If only City and MCC are utilizing City Conduit, City or its successors in interest shall give MCC prior written notice and a reasonable opportunity to assume responsibility for maintaining and operating each City Conduit Segment before removing such City Conduit Segment or ceasing to use such City Conduit Segment for the provision of services. Except where the City is otherwise legally obligated to remove a City Conduit Segment in a shorter period of time, such prior notice shall be given at least ninety (90) days in advance of such removal. Notwithstanding the foregoing, in the event that (i) the City or its successor in interest proposes to cease using a City Conduit Segment for the provision of services to customers and (ii) such City Conduit Segment contains Fiber Optic Cable owned by City and MCC and that is in use by MCC, MCC shall have the option, in order to avoid removal of such City Conduit Segment, of assuming responsibility for the operation and maintenance of the City Conduit Fiber Segment.

2.2 Scope of Grant

(i) The City shall provide MCC with access to the subject Licensed Conduit. To the extent that the City has authority to use and authorize third party use of Access Points, it will grant permission to Authorized Contractors to use such Access Points for installation, splicing and maintenance of Fiber in the Licensed Conduit as directed by MCC and at MMC's sole cost. The City shall have no obligation whatsoever to install any additional conduit or to allocate any additional space in existing City Conduit to meet the needs of MCC.

(ii) MCC shall undertake to obtain and provide all approvals, authorizations, coordination and supervision that is necessary in connection with its use of the subject Licensed Conduit and installation of fiber optic cable. Without limiting the foregoing, MCC shall have the sole responsibility for performing all activities and paying all costs necessary to install fiber within the Licensed Conduit and make the Fiber operational, including but not limited to: (i) splicing the Fiber to achieve interconnection between or within the applicable Fiber Segments and between the Fiber and fiber optic cable belonging to others, and (ii) providing, attaching and interconnecting equipment, electronics and lasers as required to transmit or receive optical signals via MCC's fiber

optic cable installed in the Licensed Conduit. MCC shall further have the sole responsibility for paying all costs and for constructing or otherwise providing facilities needed to connect the Licensed Conduit and MCC's fiber optic cable to any other network or facilities via appropriate Access Points. Except as otherwise approved by the City, such approval not to be unreasonably withheld, all installation of fiber' optic cable in the City Conduit shall be carried out only by Authorized Contractors and, to the extent reasonably practicable, only during regularly scheduled maintenance windows or at other times that are reasonably convenient for the City.

(iii) The City represents and warrants that the Underlying Rights that it possesses in the Public ROW are sufficient for MCC to install and operate its Fiber in the Licensed Conduit without any claims by third parties that MCC's intended uses are outside the scope of the Underlying Rights.

(iv) The City and MCC agree and acknowledge that MCC's use of the City Conduit and installation of MCC's owned fiber optic cable within such City Conduit does not and will not create or convey to MCC any ownership or property rights of any nature in any City owned Fiber Optic Cable or of any Access Points of the Network. MCC may not encumber, offer as collateral, or allow any third-party claims of any type on or against the City Conduit.

2.3 Designation of Licensed Fiber Strand

(i) At any time following completion of the City Conduit construction and installation, MCC may notify the City of its desire to access the City Conduit reserved for its use by the City. Such notice shall be written and shall be provided no fewer than sixty (60) days prior to the date on which desires to access the City Conduit for purposes of installation of Fiber Optic Cable. MCC's notice shall identify all of the following: (1) MCC's planned use for the Fiber Optic Cable to be installed in the City Conduit, (2) the specific portions of the City Conduit in which MCC intends to install, light and use Fiber Optic Cable, (3) the Access Points MCC desires to use (if any) to access and splice the Fiber Optic Cable to be run within the City Conduit, (4) all personnel or contractors that MCC proposes to use to perform any work activity involving the Conduit Fiber, including but not limited to construction and installation of fiber drops or laterals to ancillary Access Points or to lasers, electronics or other equipment, facilities or networks for purposes of lighting and using the Fiber Optic Cable, and (5) MCC's plans for interconnecting with and using the Fiber Optic Cable to be run within the City Conduit, including relevant technical and functional network specifications and design criteria for MCC's systems that may facilitate consultation and cooperation of MCC and the City in the interest of efficient and effective implementation of MCC's plans in accordance herewith.

(ii) Within ten (10) days following receipt of such initial notice, the City shall provide a diagram designating the specific City Conduit that is available to MCC to run Fiber Optic Cable for all purposes hereunder.

(iii) To the extent that MCC's contractors will have access to any conduit that is not exclusively licensed to MCC, the City shall have the right to determine in advance whether MCC's personnel and/or proposed contractors are qualified to perform such work activities and may disapprove any proposed personnel or contractor in its sole reasonable discretion. The City shall identify the reasons for such disapproval in writing and MCC may propose alternate personnel or contractors.

(iv) MCC is solely responsible for obtaining all public, private or government approvals, authorizations, permits, certifications, easements, rights of way and attachment rights beyond those required for installation and maintenance within the City Conduit, if any, that are necessary in order for MCC to install, light and transmit or receive signals using the Fiber Optic Cable installed in said City Conduit, and shall provide documentary evidence thereof as and when reasonably requested by the City.

2.4 Limitations and Requirements for Use of the City Conduit

(i) The City and MCC agree and acknowledge that MCC may use the Licensed Conduit to place and utilize Fiber Optic Cable for any lawful purpose for which the Fiber Optic Cable is technically suited, provided that MCC shall use the Fiber Optic Cable solely for its business purposes.

(ii) If the City determines for any reason that it is necessary to relocate, modify, underground or otherwise alter ("Relocation or Modification") all or any portion of the City Conduit, the City shall provide MCC written notification prior to making the proposed relocation, modification or alteration. Such notice shall be given at least sixty (60) days in advance except in circumstances in which the City is legally obligated to take action more promptly and the prior notification requirement of this section shall not apply to emergency situations, in which case the City will give notice as quickly as is reasonably practicable. City, MCC and any other conduit licensees shall share the costs on a pro-rata basis based upon the percentage of conduit being used by each.

(iii) Any Fiber Optic Cable, equipment, electronics, lasers, or other network facilities provided by MCC shall be installed and maintained in accordance with the requirements and specifications of then current editions of the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), each of which are incorporated by reference in this Agreement. Further, MCC and its consultants and contractors shall at all times comply with the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA), with all applicable state and federal statutes and laws, and with all applicable regulations, rules and orders issued by any state or federal agency having jurisdiction thereof, including without limitation the Federal Communications Commission, the Iowa Utilities Board, or other applicable regulatory agency.

(iv) The City reserves the right to make periodic inspections at any time of any part of MCC's Fiber Optic Cable equipment, electronics, lasers, or facilities (including interconnected fiber or copper cable) utilized by MCC in conjunction with the subject Fiber Optic Cable for purposes of assuring compliance with the terms and conditions hereof and with applicable laws, rules and regulations as reasonably necessary to prevent or detect interference with or damage to the City Conduit or breaches of MCC's obligations hereunder. Except in the case of an emergency, the City shall give MCC forty-eight (48) hours' notice before carrying out such inspections and MCC shall be permitted, but not required, to have a representative present for such inspections. Such inspections shall be conducted at the City's expense unless the City determines that MCC is not in compliance with the terms of this Agreement. In such instance, MCC shall be responsible for paying the City for all reasonable costs incurred by the City in making the inspection. MCC agrees that such periodic inspections by the City, or the failure to do so, shall not relieve MCC of any responsibility, obligation or liability

whether assumed under this Agreement or otherwise existing.

3. Maintenance

(i) The City shall maintain or arrange for maintenance of all the City Conduit and facilities interconnected with or comprising a part of City Conduit and Cable that are owned by the City, provided that the City's obligation to maintain such facilities shall not in any way extend beyond the term of any other agreement with MCC for ROW use or equipment attachments to MCC's facilities and provided further that such obligation shall cease earlier as to any City Conduit segments with respect to which the City and its successors in interests ether: (1) lose the necessary attachment and access rights to enable such maintenance; or (2) permanently cease to use such City Conduit segments for the provision of services to their customers, provided that before removing any such City Conduit segment the City gives MCC prior written notice and an opportunity to assume responsibility for maintaining and operating such City Conduit Segment as provided in Section 2.1.

(ii) MCC shall have sole responsibility for maintaining all of its Fiber Optic Cable, equipment, electronics, lasers, and other facilities installed in the City Conduit or interconnected to the Fiber Optic Cable installed in the City Conduit. MCC shall maintain its equipment, electronics, lasers and interconnecting fibers and facilities in good repair and in a manner that will not interfere with, or degrade the quality or reach of any signal, transmission or telecommunications carried on the City Cable or the City owned Fiber Optic Cable running within the same Conduit. If MCC's equipment or facilities should cause any type of interference with, or degradation of, any signal, transmission or telecommunications on the City Cable, MCC agrees to correct the condition within forty-eight (48) hours for any problem causing a degradation, but not disruption, of any signal, transmission or telecommunications on the City Cable. If MCC fails to take such corrective action, the City may in its sole discretion correct said condition at MCC's expense. The City shall notify MCC in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such conditions pose an immediate threat to public safety or interfere with the performance of the City's service obligations to its customers, or pose an immediate threat to the physical integrity of the City Cable or other facilities, the City may perform such work and/or take such action, including temporary disconnection of MCC's equipment and facilities from the City Cable, that it reasonably deems necessary without first giving written notice to MCC shall be responsible for paying the City for all reasonable costs incurred by the City in taking such corrective actions if the City shows that the problem was in fact caused by MCC's equipment or facilities. The City shall bear the cost of any reconnection or restoration of MCC's equipment or facilities that is made necessary as a result of the City's mistaken actions. The City shall be indemnified by MCC for such work in accordance with Section 4 below.

4. Liability and Damages

(i) MCC, its personnel, agents and contractors shall exercise reasonable caution to avoid damaging the facilities of the City and shall make an immediate report to the City of the occurrence of any such damage caused by its personnel, agents or contractors. MCC agrees to reimburse the City for all reasonable costs incurred by the City for repair of such facilities damaged by MCC, its personnel, agents and contractors.

(ii) MCC shall be liable to the City for all of its actions or omissions that cause damage to

the City Cable, the Access Points and all other facilities and equipment associated with the Network, or that interfere with, disrupt or degrade the quality or reach of any signal, transmission or telecommunications carried on the City Cable or the Network, but shall not be liable for any special, indirect, or consequential damages arising from MCC's actions or omissions.

(iii) The City shall not be liable to MCC for any special, indirect, or consequential damages arising from any interruption or degradation of MCC's communications carried on Licensed Fiber.

5. Mutual Indemnification

(i) Both the City and MCC (as "Indemnifying Party") hereby agree to indemnify, defend and hold harmless the other (as "Indemnitee") from and against any third party demand, claim, action, suit or proceeding ("Claim") and any resulting loss, liability, cost, expense or fine, including court and appeal costs and reasonable attorneys' fees and expenses ("Losses"), that are caused by or arise out of the actual or alleged acts or omissions, whether negligent or willful, of the Indemnifying Party, its personnel, agents, contractors or assigns, in connection with the performance under this Agreement or otherwise in connection with the construction (including any excavation), installation, operation, maintenance or use of the City Conduit or any equipment or facilities interconnected or associated therewith. In the event that any such liability, loss, damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

(ii) Notwithstanding the foregoing, each party's respective obligations as an Indemnifying Party under paragraph (i) above shall not include any liability or obligation to defend:

(a) to the extent that Losses arise out of or are caused by the Indemnitee's intentional misconduct;

(b) to the extent that the defense of any Claim is prejudiced, or the resulting Losses are caused by the Indemnitee's failure or refusal to provide the Indemnifying Party with timely notice of the Claim, or to cooperate in the defense thereof, or are caused by the Indemnitee entering into a settlement or compromise of the Claim without the prior written approval of the Indemnifying Party; or

(c) to the extent that Losses result from the Indemnitee's failure or refusal to take commercially reasonable actions as the Indemnifying Party may request, and at the Indemnifying Party's sole cost and expense, in order to mitigate or lessen such Losses.

(iii) Notwithstanding anything herein to the contrary, MCC shall also indemnify the City against any third-party claims or charges comprising pass-throughs of property taxes imposed upon structures located in the ROW by reason of the City's attachments of facilities to such structures or improvements made to such structures in order to accommodate such attachments.

(iv) Also, notwithstanding anything to the contrary, the City shall also indemnify and defend MCC against any third-party claims or charges alleging trespass by MCC or that the Underlying Rights that the third party granted to the City is insufficient to permit

MCC to use the City Conduit for its business purposes.

6. Insurance

MCC shall at all times during the term of this agreement maintain insurance coverage as required by City and set out in Exhibit A, and as such minimum insurance coverage may from time to time be amended. MCC shall make available to the City proof of Insurance (which is available at MCC) evidencing coverage currently in effect prior to commencing installation of any Fiber Optic Cable within the City Conduit. MCC shall provide the City with thirty (30) days prior written notice of cancellation or any material adverse change in conditions. All policies shall include the City as an additional insured.

7. Assignment

(i) Upon notice to City, MCC may assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this Agreement, which does not require the prior written consent of the City.

(ii) The City may not assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this Agreement at any time and for any reason without the prior written consent of MCC, which shall not be unreasonably withheld.

Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

8. Termination

The Parties shall have the right to terminate this Agreement and the license granted herein under the following circumstances:

(i) The City may terminate this Agreement: (a) upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event that MCC commits a material breach of this Agreement, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, or becomes insolvent, or becomes subject to direct control by a trustee, receiver or similar authority, or uses the Licensed Fiber for any unlawful purpose, or (b) upon sixty (60) days written notice in the event that the City for any reason ceases to have rights to operate and maintain the City Cable or any significant portion thereof.

(ii) MCC may terminate this agreement upon sixty (60) days written notice.

(iii) In the event of termination in accordance herewith for any reason, MCC shall remove all Fiber Optic Cable, equipment, electronics, lasers and fiber or other facilities installed by MCC in the City Conduit within one-hundred eighty (180) days after the effective date of the termination. All costs of any kind arising from removal of MCC's equipment, lasers and fiber, or other facilities shall be borne entirely by MCC.

9. General Provisions

9.1 Notices

(i) All notices required or permitted to be given to either party by the other party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized overnight courier service to the other party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the party at the address set forth below with postage pre-paid.

(ii) Notices shall be given to the following:

If to the City:
City of West Des Moines
PO Box 65320
West Des Moines, IA 50265

If to MCC:
MCC Iowa LLC
2205 Ingersoll Ave.
Des Moines, IA 50312

With a copy to:
MCC Iowa LLC
Attention Legal Dept.
1 Mediacom Way
Mediacom Park, NY 10918

Or to such other addresses and persons as MCC or the City may hereafter designate in a notice given in accordance with this Section 9.1.

9.2 Non-Waiver

Failure of the City to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the sane shall be and remain at all times in full force and effect.

9.3 Headings

All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

9.4 Governing Law

This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of Iowa without regard to its choice of law provisions.

9.5 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.6 Confidentiality

The parties acknowledge that MCC may disclose proprietary and confidential network and business information to the City in order to perform this Agreement. The City agrees to take all reasonable steps to protect proprietary and confidential information, so long as specifically marked as such, from public disclosure and to make available such information internally only to the City's personnel with a need to know or to its legal counsel. The City shall not disclose information marked proprietary or confidential except as required by state law in response to a formal request pursuant to the applicable Freedom of Information Law. The City shall notify MCC within forty-eight (48) hours of receiving a request under the applicable Freedom of Information Law for information about this Agreement.

9.7 Legal Capacity

Both parties represent and warrant that they have the legal capacity to enter into this Agreement and that no Applicable Law prevents the execution and enforcement of this Agreement.

9.8 Approval of City

This Agreement shall not be binding until they have received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement by the City Clerk.

9.9 Venue

Venue for any complaint, cause, case or action arising from or related to this Agreement shall be in the State of Iowa, County of Polk.

9.10 Option to purchase

The Parties agree that MCC may purchase some or all of the conduit licensed pursuant to this Agreement under the following conditions:

(i) A purchase price has been mutually agreed to by the Parties. Such purchase price shall be based upon the costs of installation of such conduit incurred by City.

(ii) Such purchase would not unduly interfere with the operations of City or other Licensee's utilization of shared City conduit.

(iii) MCC will be solely responsible for the conduit and its maintenance.

Any purchase pursuant to this section shall require the Parties to enter into a separate agreement memorializing the terms of such purchase.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF WEST DES MOINES, IOWA, an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2020, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2020, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

MCC Iowa LLC, a Delaware limited liability company

_____
Name:
Title:

STATE OF _____)
) SS
COUNTY OF _____)

This record was acknowledged before me this _____ day of _____, 2020, by _____ as _____ of MCC Iowa LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said County and State

EXHIBIT A — INSURANCE REQUIREMENTS

Insurance Requirements

MCC shall obtain and maintain through the term of this agreement *and two years beyond,* insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the services provided, but in no event, are such terms and limits to be less than those set forth below. The limits under insurance policies required by this Agreement shall in no-way limit the MCC's actual liability.

(1) Commercial General Liability
Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The City shall be included as additional insured on a primary and non-contributory basis, including waiver of subrogation in favor of the City.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000
Personal Injury & Advertising Injury - Per Person	$1,000,000
General Aggregate on the Above	$2,000,000
Products & Completed Operations General Aggregate	$2,000,000
Fire Damage Limit	$100,000
Medical Expense Limit	$5,000

(2) Business Automobile Liability Insurance
Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The City shall be included as additional insured on a primary and non- contributory basis, including waiver of subrogation in favor of the City. The limit can be satisfied by providing a primary policy or in combination with an excess liability policy.

Bodily Injury & Property Damage —Each Accident $1,000,000

(3) Workers' Compensation and Employers Liability
As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Part 1- Workers Compensation Statutory Benefits

(4) Employers Liability:

Bodily Injury Each Accident	$500,000
Bodily Injury by Disease Policy Limit	$500,000
Bodily Injury by Disease Each Employee	$500,000

(5) Umbrella Liability

MCC will maintain umbrella liability insurance on an occurrence basis in excess of the general liability, automobile liability and employer's liability insurance described above which is at least broad as all underlying policies; including but not limited to Additional Insured and Waiver of Subrogation and Primary and Non-Contributory

Each Occurrence Limit	$2,000,000
Aggregate Limit	$2,000,000

Before providing any services, MCC shall make available to the City, proof of insurance showing adequate insurance, per this Agreement, to be in force.

Any subcontractors utilized shall be subject to the same insurance requirements above.

Supplement Number_____to Master Conduit License and Sharing Agreement.

Pursuant to the Master Conduit License and Sharing Agreement between City of West Des Moines and MCC Iowa LLC, dated_____and attached hereto, the Parties hereby agree to the following SUPPLEMENT:

1. MCC shall be licensed for the following described conduit, equipment and services:

[this section shall describe in detail the exact conduit or portion of conduit company will be provided access to and any additional equipment or services (e.g. pull ropes, tracing wire, separate handholds)]

2. MCC shall pay to the City the following fee for such license

[this section *shall describe in detail the costs to be paid by company to City for the above described access and services]*

IN WITNESS WHEREOF, the Parties hereto have executed this Supplement as of the date below.

CITY OF WEST DES MOINES,
an Iowa municipal corporation

By:
Title:

Date:

MCC IOWA LLC,
a Delaware limited liability company

By:
Title:

Date: