

RESOLUTION NO. 10541

A RESOLUTION OF THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A TELECOMMUNICATION LICENSE FOR TW TELECOM OF ARIZONA, LLC, FOR AN INITIAL FIVE-YEAR TERM WITH THE OPTION OF A FIVE-YEAR EXTENSION TERM.

This License (this "License" or this "Agreement"), is issued by the City of Mesa (hereinafter called "Licensor" or "City"), an Arizona municipal corporation, to TW Telecom of Arizona, LLC ("TWTA"), a Delaware limited liability company (hereinafter called "Licensee"). Licensor/City and Licensee are collectively referred to herein as the "Parties" and individually as a "Party."

WHEREAS, City owns and/or controls public street and alley right-of-way, public utility easements, utility easements and other easements within the geographic boundaries of the City of Mesa; and

WHEREAS, TWTA has obtained from the Arizona Corporation Commission a certificate of convenience and necessity by Decision No. 63262 dated December 14, 2000 (the "CC&N") to provide intrastate telecommunications services; and

WHEREAS, TWTA desires the ability to be able to install future Facilities (as hereinafter defined) within the Public Highways (as hereinafter defined) and operate, maintain and repair existing Facilities within a portion of the right-of-way, subject to the requirements of this License and Agreement; and

WHEREAS, TWTA's facilities will carry local traffic, and TWTA is a local service provider; and

WHEREAS, City is authorized to regulate its streets, alley, public utility easements, utility easements, and other easements; to grant, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of such Facilities within the City's boundaries pursuant to the Mesa City Charter, the Mesa City Code, Title 9, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to A.R.S. §§ 9-240, 9-276, 9-581, 9-582, and 9-583), by the City's police powers, its authority over public right-of-way, and its other governmental powers and authority; and

WHEREAS, City wants to reserve rights to construct and use and allow others to construct and use all manner of additional improvements in the Public Highways; and

WHEREAS, TWTA agrees to provide and maintain accurate maps showing the location of all Facilities owned by TWTA on public property including the Public

Highways within City, and to comply with such other mapping requirements as City may establish from time to time; and

WHEREAS, TWTA will secure the appropriate licenses, encroachment and other permits required by the City Code for the placement of its Facilities placed in the City's boundaries; and

WHEREAS, TWTA has agreed to comply with public property use requirements that City has established and may establish from time to time;

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: The License between the City of Mesa and TW Telecom of Arizona, LLC, regarding the right of way license is hereby approved,

Section 2: The Council of the City of Mesa hereby authorized City Manager Christopher J. Brady, or his designated representative, to enter into the License and execute any other documents needed to implement this License on behalf of the City of Mesa, and authorizes the City Clerk to attest to the signature of the City Manager thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona this 22nd day of September, 2014.

APPROVED:


MAYOR

ATTEST:


CITY CLERK

