

**MASTER LICENSE AGREEMENT FOR INSTALLATION AND  
DISPOSITION OF UNDERGROUND FIBER-OPTIC CONDUIT  
SYSTEMS**

This Master License Agreement for Installation and Disposition of Underground Fiber-Optic Conduit Systems (“**Agreement**”) is made and entered into by and between the Ada County Highway District, a body politic and corporate of the state of Idaho (“**ACHD**”) and the city of Meridian, a municipal corporation (“**City**”), this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Effective Date**”). ACHD and the City may each individually be referred to as a “**Party**” or collectively as the “**Parties**” as appropriate under the circumstances.

**RECITALS**

A. ACHD is a single county-wide highway district organized and existing under the laws of the state of Idaho, with the jurisdiction over public rights-of-way, including sidewalks, in Ada County.

B. City is a municipal corporation with authority to permit, authorize, provide for and regulate the erection, maintenance and removal of utility transmission systems, and the laying and use of underground conduits or subways for the same in, under, upon or over the streets, alleys, public parks and public places of the City, and in, under, over and upon any lands owned or under the control of the City, pursuant to Idaho Code Section 50-328.

C. City has power and authority to contract with, grant franchises to, and regulate the various utilities in the City, pursuant to Title 50, Chapter 3 of the Idaho Code.

D. City desires to provide underground fiber-optic conduit and related facilities in the public right-of-way (collectively, “**Conduit**”) in order to enhance data connectivity within City limits, provide increased data capacity and reliability, support future expansion of a fiber-optic network, and provide savings for the public through utility facilities that are accessible and cost-efficient, as recognized by Idaho Code Section 40-210(1).

E. City desires to operate its Conduit and exercise all powers related to the Conduit as required or authorized under applicable law and as may be in the public interest, including, without limitation, sublicensing use of portions of the Conduit by third parties, public or private, with or without consideration, provided that such operation does not interfere with the public use of the public right-of-way.

F. Each distinct segment of Conduit pursuant to a certain set of design documents for a specific location is referred to herein as a “**Project**.”

G. The planned Projects traverse portions of the public right-of-way, subject to jurisdiction of ACHD under applicable law.

H. ACHD maintains a moratorium on cutting or excavation of Highway surface that has been in service for less than five years, subject to waiver by the ACHD Pavement Cut Committee, pursuant to ACHD Policy Manual (the “**Manual**”), Section 6006.1.

I. The Parties wish to minimize impact from street closures, pavement cuts and excavations and reduce the administrative burden inherent in planning and permitting the installation, maintenance, and operation of Conduit, consistent with the application process set forth in Manual Section 6008.5, *et seq.*

J. The Parties desire by this Agreement that ACHD will grant to City a limited license to install, maintain, and operate Conduit within the public rights-of-way.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals, the mutual agreements contained herein, and other good and valuable consideration, the Parties agree as follows.

**1. Nature of License.** Pursuant to the terms, conditions, and limitations of this Agreement, ACHD hereby grants to City a license to encroach upon portions of the public right-of-way in Ada County to install, maintain, and operate Conduit. This Agreement is not an exclusive right to use the public right-of-way, is not intended to preclude access to adjacent and abutting properties, and is subject to any existing easements of record or in use.

**a. Permitting.** This license is subject to permitting requirements as stated in Manual Sections 6008.5 and approval of each Project under ACHD requirements for location, design, and construction of fiber-optic facilities as stated in Manual Sections 6008.6, 6008.7, and 6008.8, and subject to ACHD's general permitting processes as stated in Section 6007 of the Manual. This Agreement shall satisfy the requirement for a license agreement under Section 6007.20.

**2. Project Areas.** The City's planned Conduit within the public right-of-way is described and depicted on **Exhibit A**. The City shall submit to ACHD descriptions and depictions of any Projects that are permitted by ACHD beginning on and after the Effective Date.

**3. Term of License.** The license granted herein will commence on the Effective Date and shall be perpetual, until revoked by ACHD or its successors or assigns or is terminated by City. The license shall be revocable by ACHD by providing thirty (30) days written notice of revocation to City upon any of the following events:

- a.** The Conduit or the use thereof interferes with public use of the public right-of-way;
- b.** City has defaulted under this Agreement.

Revocation shall apply only to that portion of the Conduit, or the City's use thereof, which interferes with public use of the public right-of-way or is otherwise implicated in the City's default under this Agreement, and the license as to the remainder of the Conduit shall remain in full force and effect. City may terminate this Agreement by providing thirty (30) days written notice of termination to ACHD.

**4. Ownership.** City acknowledges that the real property licensed herein is a public right-of-way, and City waives any claim to ownership of the right-of-way whether in fee, adverse possession, or any other right, title, or interest therein, other than established pursuant to the terms of this Agreement. This Agreement does not extend to City the right to use the right-of-way to the

exclusion of ACHD for any use within its jurisdiction, authority, and discretion, or of others to the extent authorized by law, to use the public right-of-way. If the right-of-way has been opened as a public Highway (as used in this Agreement, the term “**Highway**” is as defined in Idaho Code Section 40-109(5)), City’s authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. City’s authorized use is also subject to the rights of holders of easements of record or easements obvious on inspection of the right-of-way and statutory rights of utilities to use the public right-of-way. This Agreement is not intended to, and shall not, preclude or impede ACHD’s ability to enter into other similar agreements in the future allowing third parties to also use its public rights-of-way, or ACHD’s ability to redesign, reconstruct, relocate, maintain, and improve its public rights-of-way and Highways as authorized by law and as it determines, in its sole discretion, is appropriate.

## **5. Conduit Disposition.**

**a. Installation.** City shall provide ACHD Utility Coordinator a plan and profile sheet showing placement of Conduit in the right-of-way. City shall become a Dig Line utility member and shall register each Project with other locating services as appropriate in the City’s discretion.

**b. Maintenance.** At its sole cost and expense, City shall maintain the Conduit in good condition and repair and as required to satisfy applicable laws, the policies of ACHD, and sound engineering practices. City shall have access over, across, and under the right-of-way for the purposes of accomplishing such repair and maintenance.

**c. Use.** The Conduit shall be for the exclusive use by City and any entities that the City may hereafter sublicense to occupy and use the Conduit, for all lawful purposes within the City’s authority, subject to the terms of this Agreement.

**d. No Interference.** Except as is temporarily necessary for the accomplishment of the work itself, City’s installation, maintenance, repair, removal, replacement, upgrade, and/or reinstallation and operation of any Conduit shall not interfere with ACHD’s use and operation or the public’s use of the public right-of-way or any ACHD facilities associated with the right-of-way.

**e. Damage.** If the Highway on and/or adjacent to the right-of-way is damaged as a result of (i) the performance by City of the maintenance required by this section, or the failure or neglect to perform such maintenance, or (ii) City’s design, installation, or use of the Conduit, regardless of cause, then the City shall, at its sole cost and expense, correct such deficiency and restore the Highway and the surface of the right-of-way to the same condition it was prior thereto. If City fails or neglects to commence such correction and restoration within five (5) business days of notification thereof, ACHD may proceed to do so, in which event City agrees to reimburse ACHD for the costs and expenses thereof, including, without limitation, reasonable compensation for the use of staff and equipment of ACHD.

**f. Emergency.** Notwithstanding the provisions of the preceding paragraph, should an emergency exist related to the City’s use of this license which threatens the stability or function of the Highway on or adjacent to the right-of-way or the safety of the public use thereof, ACHD shall have the right to immediately perform, on behalf of, and at the cost of City, necessary emergency

repairs, provided that ACHD provides written notice to City of such emergency and necessary repairs as soon as practicable.

**g. Relocation.** City understands and agrees that it may be required to remove and/or relocate Conduit to the extent it interferes with public use of the public right-of-way and/or to the extent that ACHD determines that a Highway on and/or adjacent to the public right-of-way requires widening, realignment, redesign, improvement and/or reconstruction as would necessitate the relocation, modification, or other adaptation of any Conduit. City or its sublicensee, at its sole cost and expense, shall be responsible for relocating, modifying, or otherwise adapting the affected Conduit as required by ACHD and in compliance with Laws. ACHD shall give City at least ninety (90) days prior written notice of the need for such relocation, modification, or adaptation by City. In response to such notice, City may also elect to remove the affected Conduit in lieu of any such relocation, modification, or adaptation.

**h. Removal.** It is agreed that upon the revocation of the license granted herein, City shall remove at no cost or expense to ACHD, and within a reasonable time and subject to ACHD's approval of necessary work permits, all Conduit for which the license is revoked. City agrees to return all such premises as nearly as practical to the condition that the premises were in before any use by City. Should City fail to remove the Conduit as required, ACHD may remove it and assess City for the costs of the removal. City will also be liable for all costs incurred by ACHD to cause the property to be returned to the same condition it was in before the grant of this license. It is further agreed that if City does not remove the Conduit upon revocation of the license, City hereby disclaims any interest or title to that Conduit, which shall pass to ACHD at no cost to ACHD.

**6. No Cost to ACHD.** Any and all costs and expenses associated with City's authorized use of the right-of-way, or any construction or installation of Conduit thereon, or the repair and maintenance thereof, or the relocation of Conduit thereon, or the restoration thereof upon revocation of this Agreement, shall be at the sole cost and expense of City.

**7. ACHD Fees.** Any ACHD fees for Conduit-related permits shall be waived in accordance with the Interagency Governmental Agreement for Waiver of Costs and Fees, executed between ACHD and City and dated September 5, 2018, which is incorporated herein by reference.

**8. Permit Coordination.** It is agreed by ACHD and City that it is in their mutual best interest and the interest of the public that the Conduit be located within the public right-of-way as herein contemplated, and, to that end, the Parties shall coordinate and cooperate with each other in good faith regarding permit applications received by ACHD for placement, repair, removal, or relocation of underground fiber-optic to the extent such application creates a potential for reducing street closures, pavement cuts, excavations, and administrative burden on the Parties through any of the following:

- a.** Installing new underground fiber-optic cable inside City-owned Conduit;
- b.** Building out or extending the Conduit during installation of new underground fiber-optic facilities requiring excavation of the public right-of-way in areas suitable for build-out or extension of the Conduit;

c. Conducting repair or maintenance on Conduit during other projects requiring excavation.

**9. Sublicense.** City may sublicense the rights and obligations set forth herein, including, without limitation, the right to install fiber-optic cable within the Conduit and otherwise use and occupy the Conduit, provided that the sublicensee becomes obligated to comply with all the terms and conditions of this Agreement.

**10. Compliance with Laws.** City, in the performance of its rights and responsibilities under this Agreement, shall (i) comply with, and take reasonable action to ensure that any sublicensee complies with, all applicable federal, state, and local laws, ordinances, rules, and regulations, including the ACHD policies and ordinances (collectively “**Laws**”), and (ii) commit no waste or allow any nuisance on the public right-of-way.

**11. Default.** Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period, has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

**12. Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, riots, flood, earthquakes, fire or other casualty, the elements or acts of God, or other causes, other than financial, beyond a party’s reasonable control.

**13. Indemnification.** City will, to the extent permitted by law, indemnify, defend, and hold harmless ACHD, its agents, successors, and assigns, against all actions, claims, demands, liabilities, damages, debts, bodily injury, and property damage, including all expenses, costs and attorney fees that may in any manner be imposed or incurred by ACHD resulting from the failure or neglect of City, its agents, contractors, employees, and sublicensees to comply with Laws or properly use, maintain, and/or regulate the Conduit. City’s obligations pursuant to this paragraph shall survive the termination of this Agreement.

**14. Hazardous Material Claims.** City will be solely responsible for and will indemnify and hold harmless ACHD, its respective directors, officers, employees, agents, successors, and assigns from and against any and all loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under or about the Conduit premises and relating to the City’s use of the public right-of-way pursuant to this Agreement, including without limitation (1) all damages, (2) the costs of any required or necessary repair, cleanup or detoxification of the property and (3) all reasonable costs and expenses incurred by ACHD in connection therewith, including but not limited to reasonable attorneys' fees. City’s obligations pursuant to this paragraph shall survive the termination of this Agreement.

**15. Attorneys' Fees.** It is agreed by and between the Parties that in the event suit is instituted for the purpose of enforcing any and all of the provisions of this Agreement, the prevailing party will be entitled to such attorneys' fees as are adjudged reasonable by the Court.

**16. Miscellaneous.**

**a. Successors and Assigns.** The terms and conditions hereof shall be binding upon and inure to the benefit of the respective Parties, their administrators, executors, successors, and assigns.

**b. Severability.** If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the Parties and shall survive the severed provisions.

**c. Entire Agreement.** This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the Parties with regard to the transaction contemplated herein, and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants, and agreements except as specifically set forth herein.

**d. Acknowledgments and Modifications.** No acknowledgments required hereunder, and no modification or waiver of any provision of this Agreement or consent to departure therefrom, shall be effective unless in writing and signed by the Parties.

**e. Assignment.** Either party shall be entitled to assign this Agreement to an entity which is either statutorily authorized to be its successor or is an entity controlled by the assigning party, provided that such assignee assumes all the obligations, warranties, covenants, and agreements of the assigning party herein contained. Otherwise, neither party shall be entitled to sell, assign, or otherwise transfer this Agreement without the prior written consent of the other party, which consent will not be granted unless such assignee or transferee assumes all the obligations, warranties, covenants, and agreements of the assigning party herein contained.

**f. Further Assurances.** Each party shall cooperate fully with the other and execute such further instruments, documents, and agreements and give such further written assurances as may be reasonably requested to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

**g. Captions and Headings.** The captions and headings in this Agreement are solely for reference purposes and shall not affect the interpretation of any provision of this Agreement.

**h. Third Parties.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.

**i. Choice of Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Idaho. Venue for any legal action arising from this Agreement shall be Ada County, Idaho.



EXECUTED as of the date first above written.

**Ada County Highway District:**

\_\_\_\_\_ Date:

By: Alexis Pickering \_\_\_\_\_

Its: President \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_ Date:

Ryan Head, Director

**Meridian :**

By: \_\_\_\_\_ Date:

Robert Simison, Mayor

**ATTEST:**

By: \_\_\_\_\_ Date:

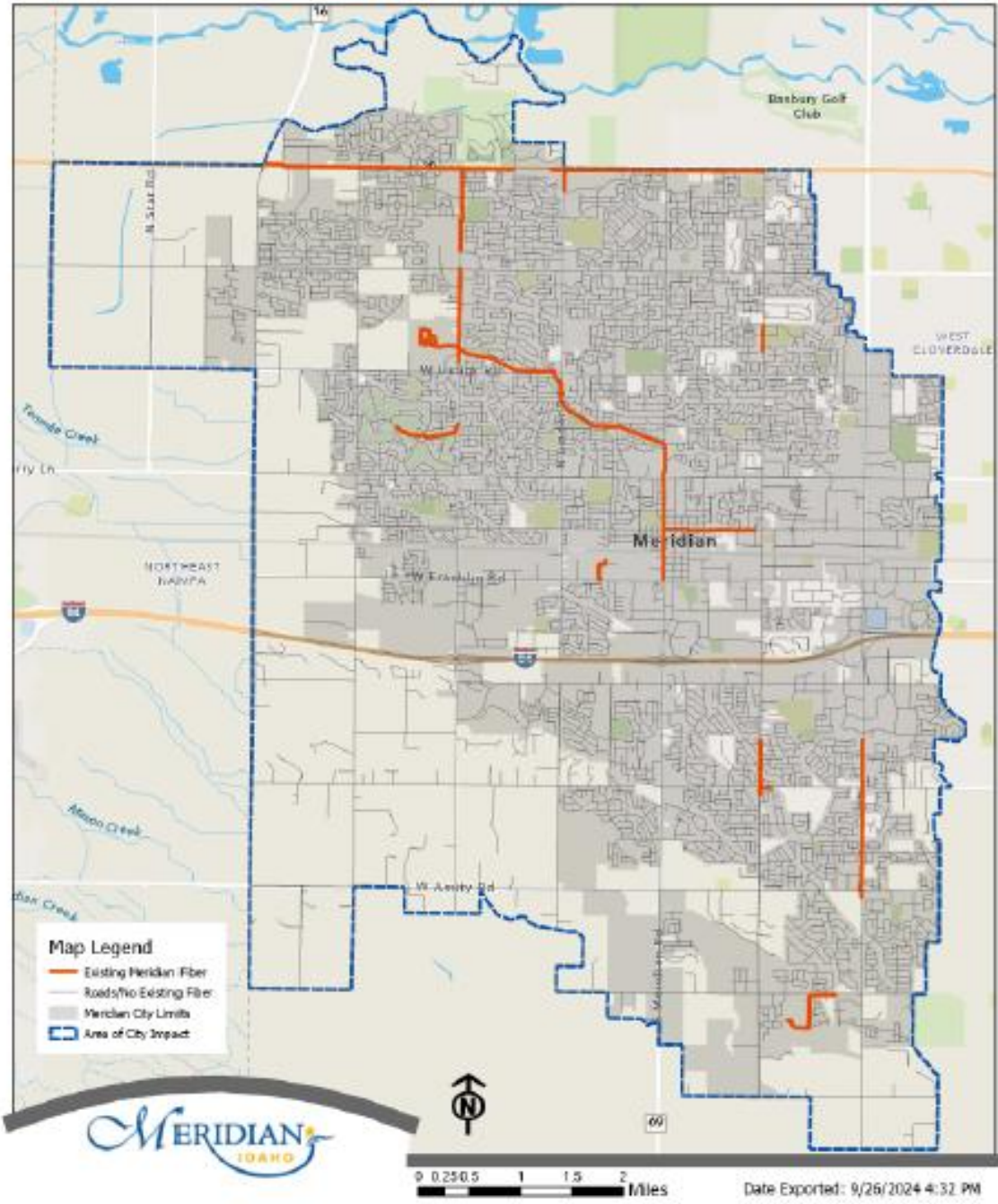
Chris Johnson, *Ex-Officio* City Clerk



**EXHIBIT A**

**Depiction of Planned Conduit**

**Map of Fiber Conduit**



**EXHIBIT B**

**Reserved**