

## **AGREEMENT**

AGREEMENT (the "Agreement") made and entered into as of September 26<sup>TH</sup>, 2016, by and between the City of Sioux City, Iowa (the "City"), Woodbury County, Iowa (the "County"), Siouxland Tri-State Area Radio Communications ("Starcomm") and FiberComm, L.L.C. ("FiberComm").

### **Background**

A. The County has installed underground conduit from 6<sup>th</sup> Street and Lewis Boulevard to 4647 Stone Avenue as part of the Siouxland Tri-State Radio Communications ("Starcomm") fiber network ("Conduit A") which is currently empty/unoccupied, as shown on the attached Conduit A.

B. The City has access to a currently empty/unoccupied FiberComm conduit under a separate agreement with FiberComm dated November 26, 2012, pursuant to Resolution No. 2012-0825, from Hamilton Boulevard to Riverside Boulevard on West 19<sup>th</sup> Street, ("Conduit B") which is currently empty/unoccupied, as show on the attached Conduit B.

C. The parties have agreed that FiberComm will provide and install fiber optic cable, conduit and splicing services as set forth below in return for the right to use and occupy the Conduit A owned by the County.

### **Terms**

NOW, THEREFORE, the parties agree as follows:

1. Obligations of the County.

(a) The County will own, operate and maintain the existing County Conduit described in Background Paragraphs A.

2. Grant of Rights to FiberComm. The County grants FiberComm the right and license to install, operate, and maintain fiber cable and place additional splice vaults, in which FiberComm will have unconditional use within the existing spare 2" Conduit A between the locations described above in Background Paragraph A for operating (including splicing), testing, maintenance, or any other reasonable purpose, at any splice vaults or hand hole on the Conduit A or at any other locations where the fiber optic cable may be accessed. It is acknowledged by the parties that FiberComm's right to use the Conduit A is exclusive and that the County continues retain ownership of the conduit.

3. Obligations of FiberComm.

(a) FiberComm shall provide all labor and material for installation and connection at the initial time of installation of one (1) ninety-six (96) fiber between Hamilton Boulevard and Riverside Boulevard in the conduit described in the above Paragraph B. FiberComm shall provide all labor and material of one (1) twelve (12) fiber

provided by the City to all of the signal cabinets and Fire Station 8 along with one (1) twenty-four (24) fiber provided by Starcomm to the Starcomm Communications Tower along West 19<sup>th</sup> Street. The fiber optic cable is to be owned and operated by the City. FiberComm will provide any conduit, vaults and splicing needs as described within this paragraph and as described within Exhibit C.

(b) For the entire period that FiberComm operates optical fiber or occupies space within Conduit A, as described in Background Paragraphs A and B of this Agreement, FiberComm will provide at no cost to the County, City or Starcomm all necessary Iowa One Call locating services of the Conduits A and B and encased fiber.

(c) FiberComm agrees that open cutting of public rights-of-way or private driveways or sidewalks in the Project to maintain its fiber shall be replaced to their condition prior to opening.

#### 4. Obligations of the City.

(a) The City will provide Starcomm with twenty four (24) fibers within the ninety six (96) fibers from the Starcomm Communications Tower to West 19<sup>th</sup> Street and Hamilton Boulevard and twelve (12) fibers from West 19<sup>th</sup> Street and Hamilton Boulevard, north to Outer Drive on to 6<sup>th</sup> Street and Lewis Boulevard within the City's fiber optic network. The City will provide Starcomm with twelve (12) fibers from West 19<sup>th</sup> Street and Hamilton Boulevard to West 14<sup>th</sup> Street and Hamilton Boulevard onto the MLK fiber room located at 501 Nebraska Street, Sioux City.

#### 5. Obligations of all Parties.

(a) The parties agree that in the event that it is necessary to relocate the Conduits described in Background Paragraphs A and B, and/or the fiber to accommodate a public improvement and/or for the repair of a public improvement in the public right-of-way, the responsibility and costs shall be apportioned as follows:

(1) Starcomm agrees that it will be responsible for the relocation of the County Conduit A at its expense.

(2) The City agrees that it will be responsible for associated expenses for the relocation of the City's fiber cable installed in FiberComm's Conduit B.

(4) FiberComm agrees that it will be responsible for associated expenses for the relocation of the fiber owned by FiberComm as described in Paragraphs A and B including splicing.

(b) FiberComm agrees to require all general contractors who may perform any work for FiberComm under the terms of this Agreement to post a payment bond with a surety by a company licensed to do business in the State of Iowa guaranteeing payment of all subcontractors and suppliers of the general contractor. In the event that FiberComm does not comply with this paragraph, it shall become a personal guarantor of the general contractor's obligations. This requirement is specifically provided for the benefit of third parties.

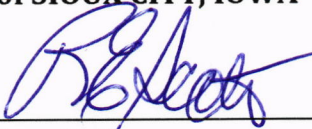
6. Indemnification. FiberComm agrees that it shall defend at its own expense, in the name and on behalf of the County, City and Starcomm, and shall indemnify and save harmless the County, City and Starcomm from any and all claims, suits, losses, damages, costs or expenses, to the extent caused or contributed to by the negligence of FiberComm or its contractor(s), on account of injury or damage to any person or property, caused or occasioned or allegedly caused or occasioned, in whole or in part, by reason of or arising out of the construction, excavation, operation or maintenance of the ducts and fiber permitted by this Agreement.

7. Miscellaneous.

(a) This Agreement, and any related written agreement that expressly references this Agreement, constitutes the entire Agreement of the parties with respect to the conduits, ducts, fiber and FiberComm's facilities, and the parties' rights and obligations with respect thereto and supersedes and cancels all prior discussions, arrangements, or agreements, written and oral, with respect to those subjects.

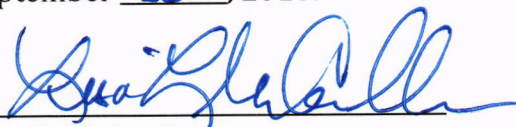
IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**CITY of SIOUX CITY, IOWA**

By   
\_\_\_\_\_  
Robert E. Scott  
Mayor of Sioux City, Iowa

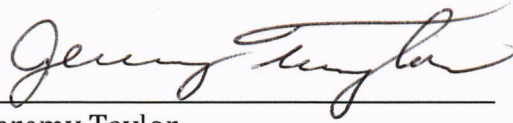
Certification of City Clerk:

I, Lisa L. McCardle, certify that I am the City Clerk of the City of Sioux City, Iowa, and that Mayor Robert E. Scott, who executed this Agreement for and on behalf of the City, was duly authorized and empowered to do so as of September 26<sup>th</sup>, 2016.

  
\_\_\_\_\_  
Lisa L. McCardle,  
City Clerk of the City of Sioux City, Iowa

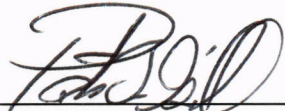


**WOODBURY COUNTY, IOWA**

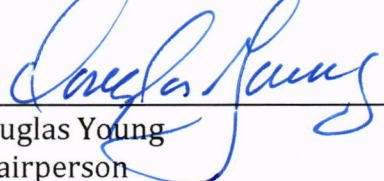
By   
Jeremy Taylor  
Chairperson

Certification of County Auditor:

I, Patrick Gill, certify that I am the County Auditor of the Woodbury County, Iowa and that Jeremy Taylor, who executed this Agreement for and on behalf of the County, was duly authorized and empowered to do so as of September 20, 2016.

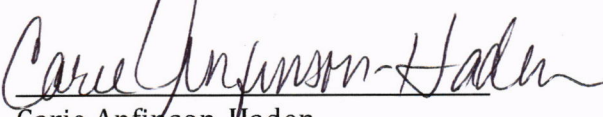
  
Patrick Gill  
Woodbury County Auditor

**STARCOMM, WOODBURY COUNTY, IOWA**

By   
Douglas Young  
Chairperson

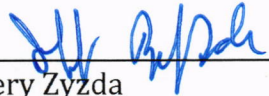
Certification of Starcomm:

I, Carie Anfinson-Haden, certify that I am the Administrative Secretary for Starcomm and that Chairperson Douglas Young, who executed this Agreement for and on behalf of Starcomm, was duly authorized and empowered to do so as of September 16, 2016.

  
Carie Anfinson-Haden,  
Administrative Secretary for Starcomm

**FIBERCOMM, L.L.C.**

Date: 9/12/2016

By   
Jeffery Zyzda  
Director of Operations & Engineering



# STARCOMM CONDUIT A

## TRI-STATE PUBLIC SAFETY COMMUNICATIONS FIBER OPTICS ROUTE



03-09-04  
 Glenn Sedivy

**Legend**

- Vaults
- Fiber Route 13,914 feet
- Streets



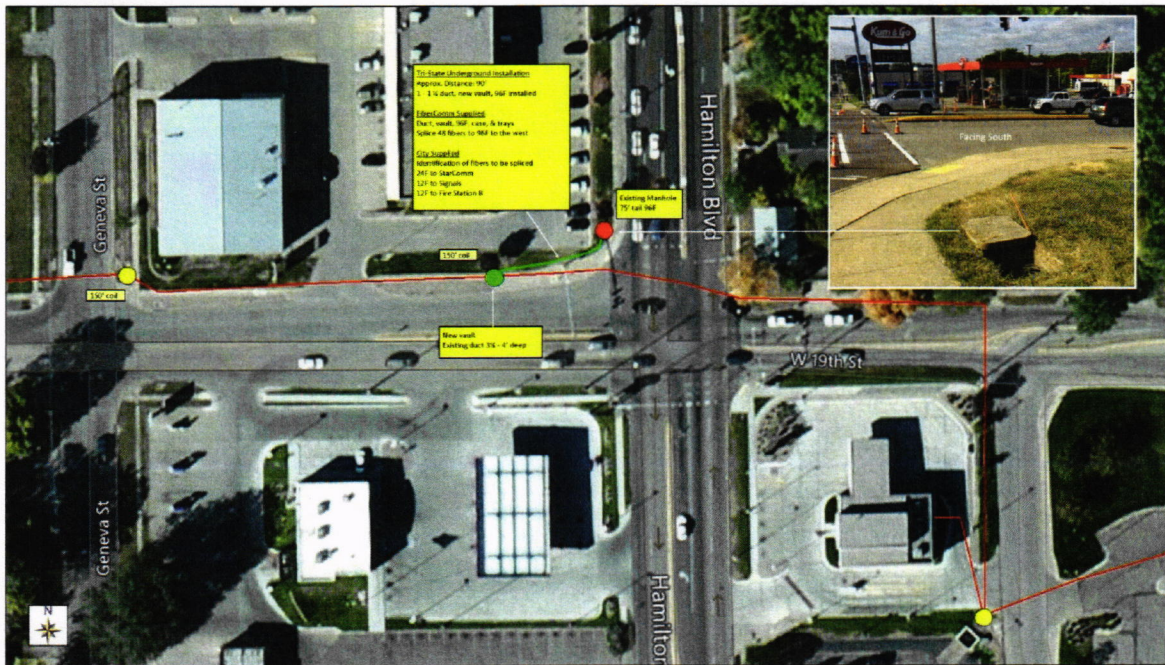




# EXHIBIT C

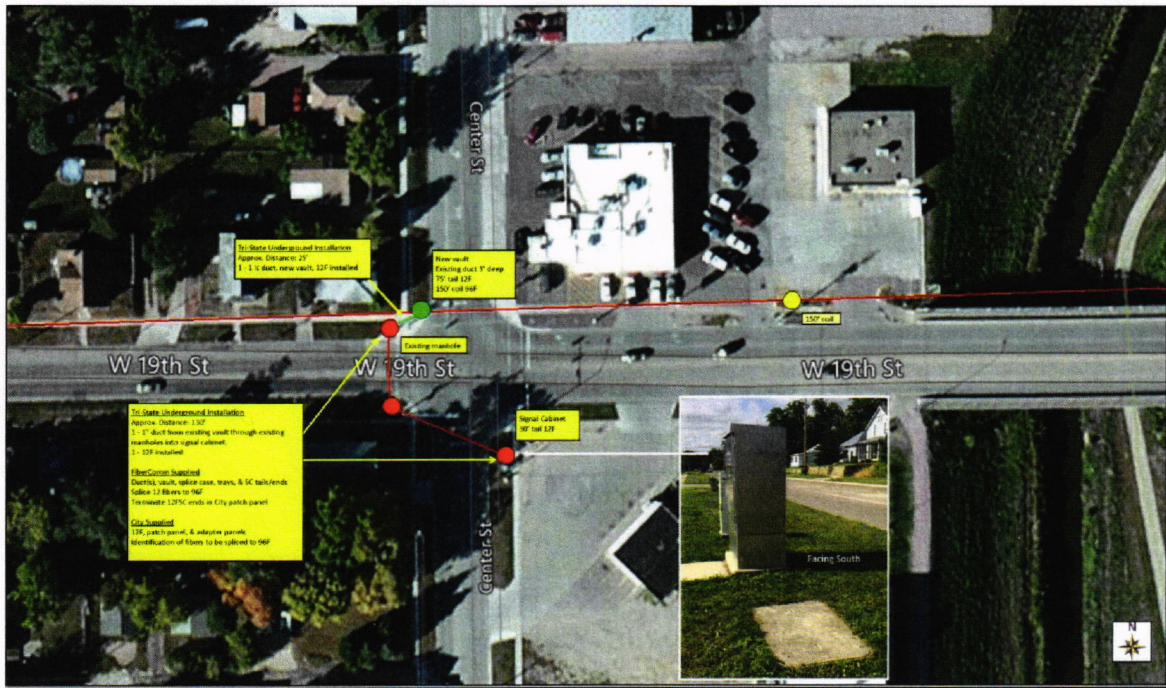


<p>712-224-2020 1605 9th St. Sioux City, IA 51101</p>	<p>PROJECT: Proposed Fiber Build for City of Sioux City: W 19th &amp; Hamilton</p>	<p>Existing FiberComm/City Hand Hole Existing FiberComm/City Facilities Proposed City Hand Hole Proposed FiberComm Facilities</p>
	<p>DATE: JUL 2016 CONTACT: Jeff Zyzda, <a href="mailto:jzyzda@fibercomm.net">jzyzda@fibercomm.net</a> SCALE: Not to Scale PAGE: 1 of 13</p>	



<p>712-224-2020 1605 9th St. Sioux City, IA 51101</p>	<p>PROJECT: Proposed Fiber Build for City of Sioux City: W 19th &amp; Hamilton</p>	<p>Existing FiberComm/City Hand Hole Existing FiberComm/City Facilities Proposed City Hand Hole Proposed FiberComm Facilities</p>
	<p>DATE: JUL 2016 CONTACT: Jeff Zyzda, <a href="mailto:jzyzda@fibercomm.net">jzyzda@fibercomm.net</a> SCALE: Not to Scale PAGE: 2 of 13</p>	





**FiberComm** 712-224-2020  
1605 9th St. Sioux City, IA 51101

PROJECT: Proposed Fiber Build for City of Sioux City: W 19th & Center  
DATE: JUL 2016 CONTACT: Jeff Zyda, [jzyda@fibercomm.net](mailto:jzyda@fibercomm.net) SCALE: Not to Scale PAGE: 3 of 13

- Existing FiberComm/City Hand Hole
- Existing FiberComm/City Facilities
- Proposed City Hand Hole
- Proposed FiberComm Facilities



**FiberComm** 712-224-2020  
1605 9th St. Sioux City, IA 51101

PROJECT: Proposed Fiber Build for City of Sioux City: W 19th & Rebecca  
DATE: JUL 2016 CONTACT: Jeff Zyda, [jzyda@fibercomm.net](mailto:jzyda@fibercomm.net) SCALE: Not to Scale PAGE: 4 of 13

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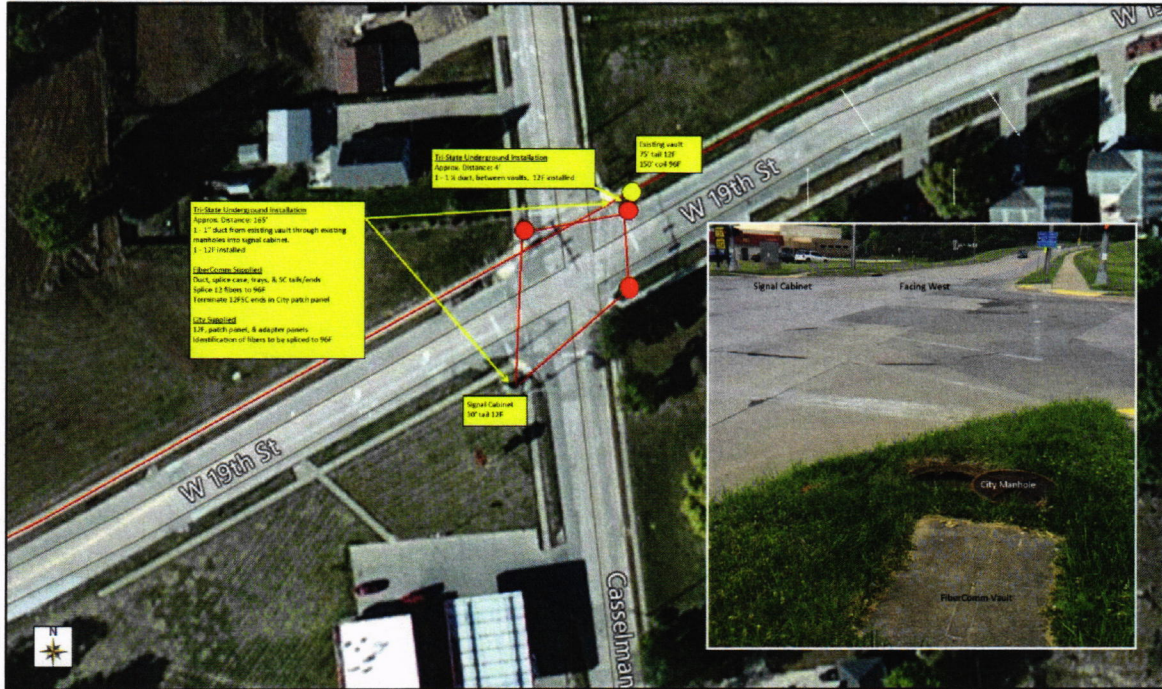


	712-224-2020 1606 9th St. Sioux City, IA 51101	PROJECT: Proposed Fiber Build for City of Sioux City: W 19th DATE: JUL 2016 CONTACT: Jeff Zyzda, <a href="mailto:jzyzda@fibercomm.net">jzyzda@fibercomm.net</a>	SCALE: Not to Scale    PAGE: 5 of 13	<ul style="list-style-type: none"> <li> Existing FiberComm/City Hand Hole</li> <li> Existing FiberComm/City Facilities</li> <li> Proposed City Hand Hole</li> <li> Proposed FiberComm Facilities</li> </ul>
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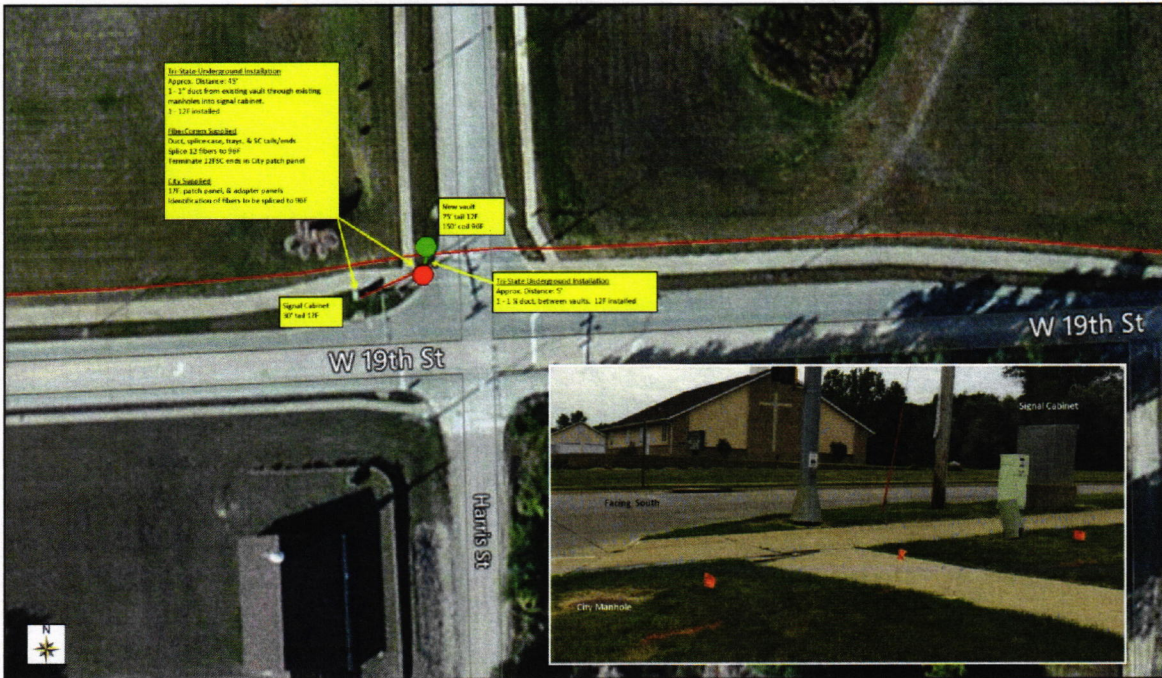




**FiberComm** 712-224-2020  
1606 9th St.  
Sioux City, IA 51101

PROJECT: Proposed Fiber Build for City of Sioux City: W 19th & Casselman  
DATE: JUL 2016 CONTACT: Jeff Zyda, [jzyda@fibercomm.net](mailto:jzyda@fibercomm.net) SCALE: Not to Scale PAGE: 7 of 13

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Existing FiberComm/City Facilities  
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Proposed FiberComm Facilities

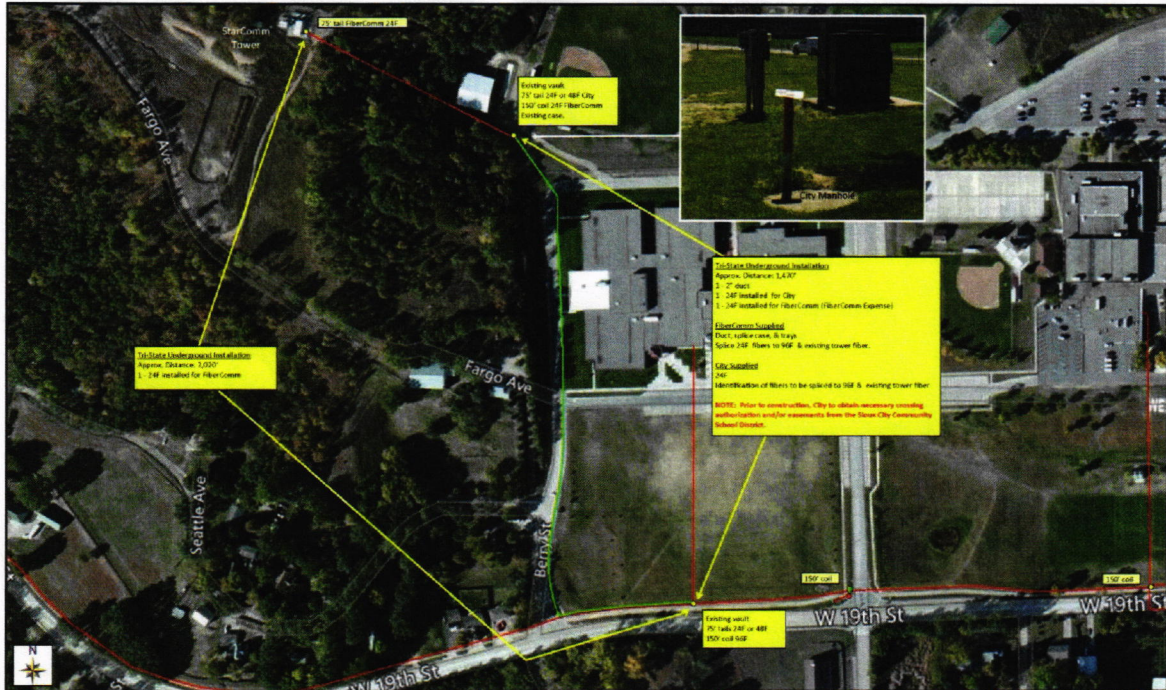


**FiberComm** 712-224-2020  
1606 9th St.  
Sioux City, IA 51101

PROJECT: Proposed Fiber Build for City of Sioux City: W 19th & Harris St.  
DATE: JUL 2016 CONTACT: Jeff Zyda, [jzyda@fibercomm.net](mailto:jzyda@fibercomm.net) SCALE: Not to Scale PAGE: 8 of 13

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Proposed City Hand Hole  
Proposed FiberComm Facilities

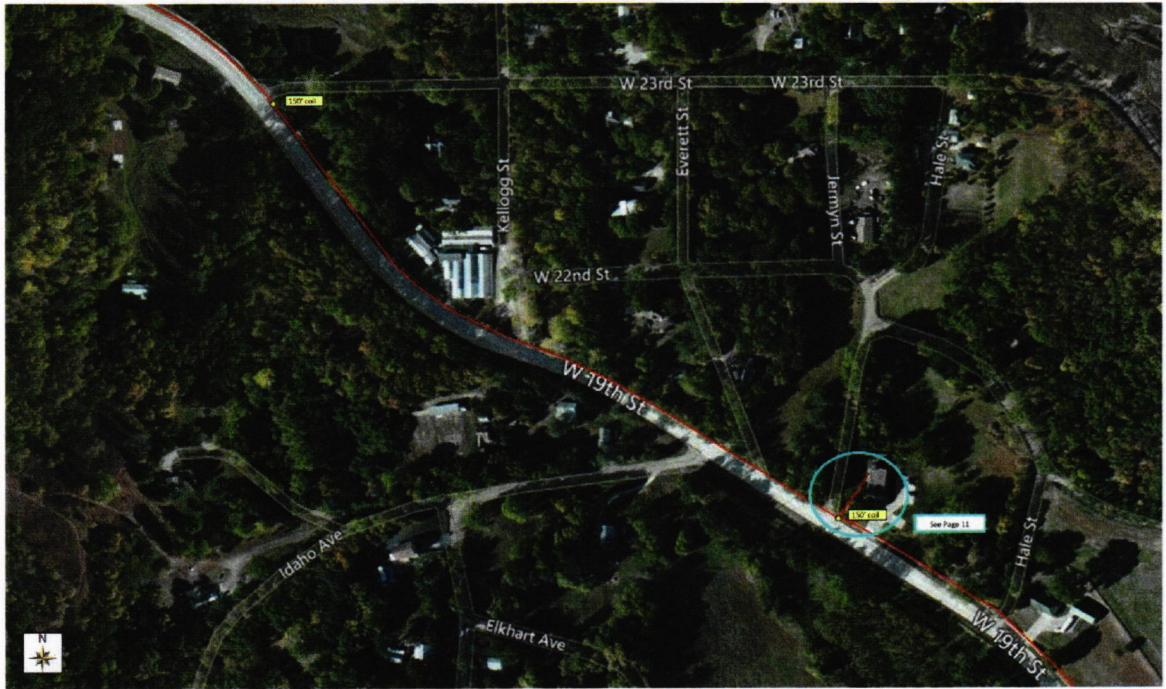




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1606 9th St.  
Sioux City, IA 51101

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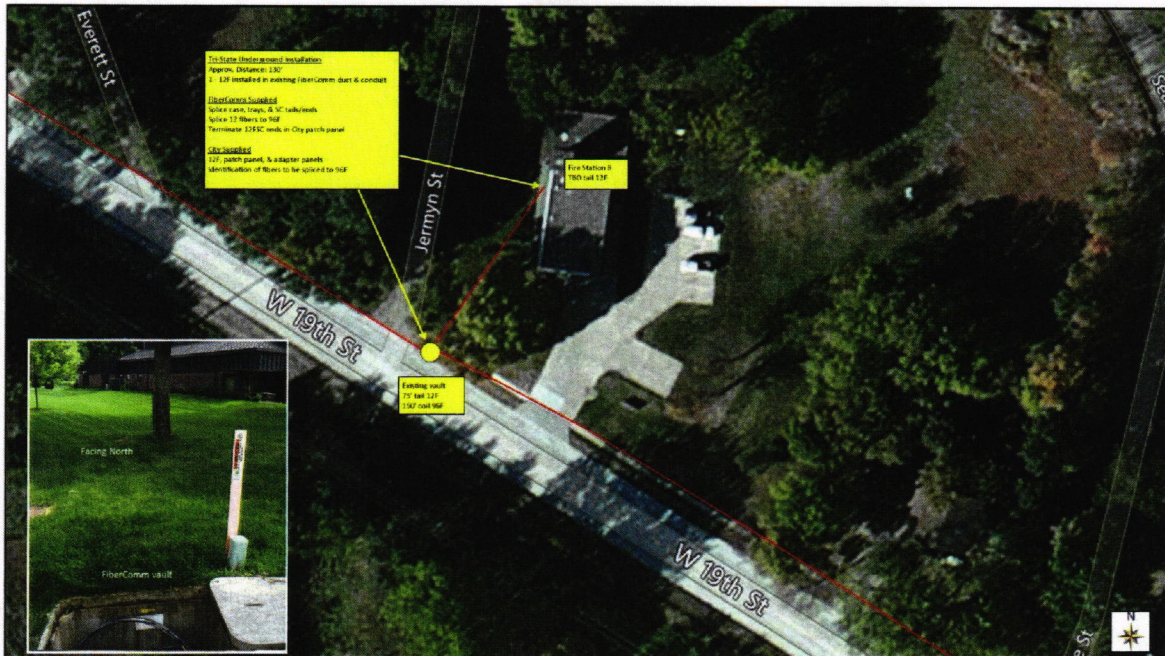


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**FiberComm** 712-224-2020  
1605 9th St.  
Sioux City, IA 51101

PROJECT: Proposed Fiber Build for City of Sioux City: W 19th & Fire Station 8  
DATE: JUL 2016 CONTACT: Jeff Zyza, [jzyza@fibercomm.net](mailto:jzyza@fibercomm.net) SCALE: Not to Scale PAGE: 11 of 13

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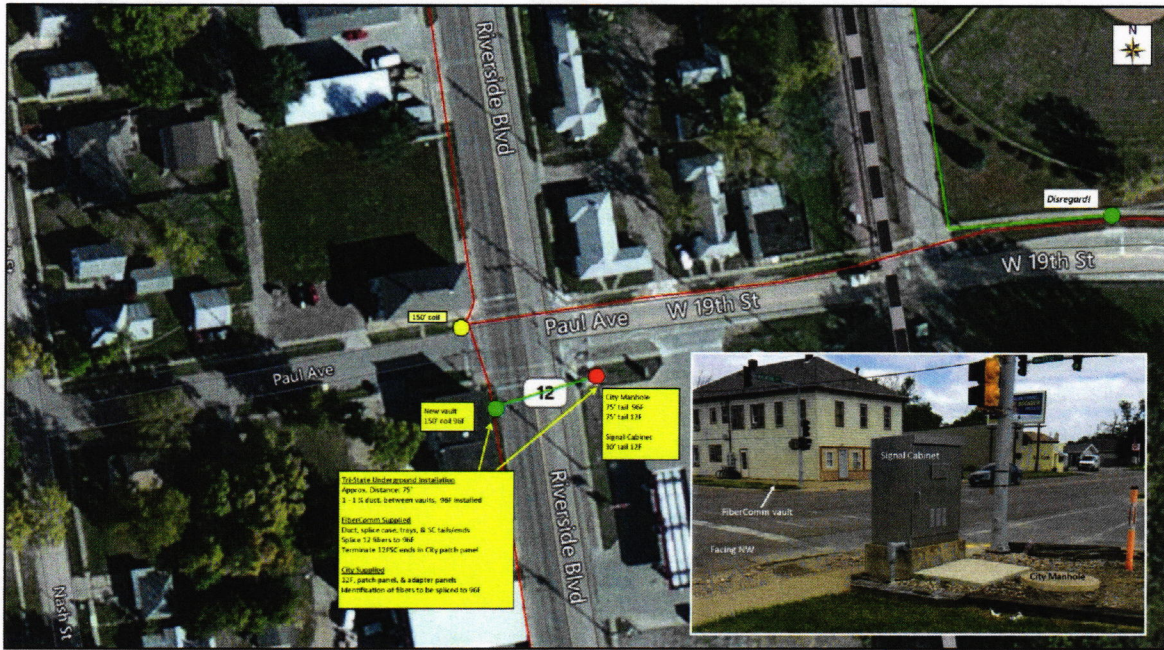


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Sioux City, IA 51101

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- Proposed City Hand Hole
- Proposed FiberComm Facilities





**FiberComm**  
 712-224-2020  
 1606 9th St.  
 Sioux City, IA 51101

**PROJECT:** Proposed Fiber Build for City of Sioux City: W 19th & Riverside Blvd.  
**DATE:** JUL 2016 **CONTACT:** Jeff Zyda, [jzyda@fibercomm.net](mailto:jzyda@fibercomm.net) **SCALE:** Not to Scale **PAGE:** 13 of 13

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