

TELECOMMUNICATIONS FACILITIES EXCHANGE AGREEMENT

AGREEMENT (the "Agreement") made and entered into as of September 23RD, 2013, by and between the City of Sioux City, Iowa (the "City"), and Woodbury County, Iowa (the "County").

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Background

- A. The City owns and operates a fiber optic cable from Tri-View Avenue to Stone Park Boulevard on Hamilton Boulevard. This fiber optic cable network will be connected to the City's Martin Luther King Fiber room within the 2013-2014 calendar years.
- B. The City jointly owns empty fiber optic conduits with the Department of Transportation, Long Lines and FiberComm between Myrtle Street and Tri-View Avenue that continues east to Wesley Parkway. This fiber conduit will be connected to the City's downtown fiber conduit system within the 2013-2014 calendar years.
- C. The County will install 835 feet of 1-2" underground conduit under Hamilton Boulevard east on Myrtle Street to Tri-View Boulevard, as shown on attachment A.
- D. The County will install 250 feet of 1- 1 1/4" underground conduit from Myrtle Street to the County's Veteran's Affairs building, as shown on attachment A.

Terms

NOW, THEREFORE, the parties agree as follows:

1. Obligations of the City.

The City will own, operate, and maintain the existing City Conduit described in Background Paragraphs A and B.

The City will own, operate, and maintain the City's Conduit described in Background Paragraph C.

2. Grant of Rights to the County.

- (a) The City grants the County the right to have unconditional use of two (4) dark "un-lit" fibers owned by the City as described above in paragraphs A and B. The County will be assigned fibers number 13, 14, 15, 16 of the City's 96 fiber cable described in paragraph A.

3. Obligations of the County

- (a) The County shall provide all labor and material for the initial installation of (1) 2" conduit as described in paragraph C, which will be owned and operated by the City.

- (b) The County shall provide all labor and material for the initial installation of (1) 1 1/4" conduit as described in paragraph D, which will be owned and operated by the County.
- (c) The County shall provide all labor for the initial installation and connection of (1) City provided 12 fiber cable and locate wire in the described conduit in paragraph D, which will be owned and operated by the County.
- (d) The County agrees that open cutting of public rights-of-way or private driveways or sidewalks in the Project shall be replaced to their condition prior to opening.
- (e) The parties agree that in the event that it is necessary to relocate the City Conduit 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) The City agrees that it will be responsible for the relocation of the City Conduit and City Fiber as described in paragraphs A, B and C at its expense.
- (f) The County agrees to require all general contractors who may perform any work for the County 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 the County 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.
- (g) In no event shall the County be liable to the City for any interruptions to service or interference with the operations of the City's services or business. In no event shall the City be liable to the County for any interruptions to service or interference with the operations of the County.

4. Indemnification.

- (a) The City shall defend at its own expense, indemnify and hold harmless the County from all claims and liability due to activities of persons employed by or representing the City. The County agrees that it shall defend at its own expense, in the name and on behalf of the City, and shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, to the extent caused or contributed to by the negligence of the County 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.

5. 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 City Conduit, the County Conduit, ducts, fiber, and the County 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.

- (b) The parties agree that the County's rights and obligations under this Agreement may be transferred to a successor in interest or assignee with the written consent of the City which shall not be unreasonable withheld.
- (c) Each party agrees to execute such additional documents and to take such actions as may reasonably be requested by the other party to confirm or carry out the intent and purposes of this Agreement.
- (d) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Iowa applicable to contracts made and to be performed entirely within such State, without regard to the conflict of laws principles of such State.
- (e) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement.

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

Woodbury County

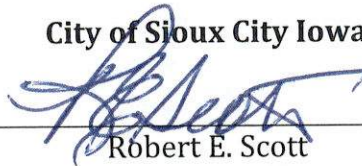
By:



Larry D. Clausen
Chairman

City of Sioux City Iowa

By:



Robert E. Scott
Mayor of Sioux City, Iowa

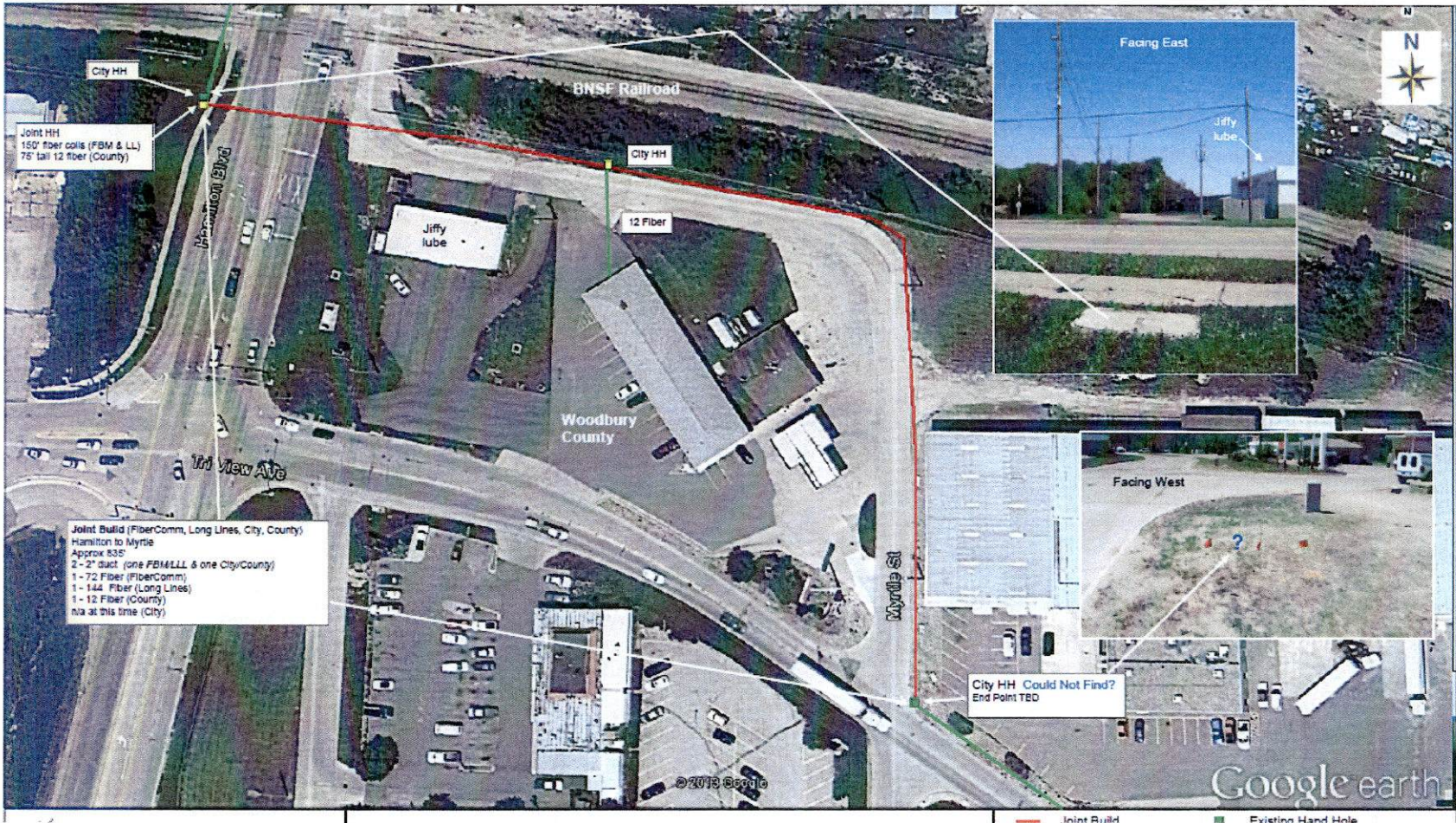
Certification of City Clerk:

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 23RD, 2013.**



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

ATTACHMENT A



RESOLUTION NO. 2013 - 000726
with attachments

RESOLUTION APPROVING A TELECOMMUNICATIONS FACILITIES EXCHANGE AGREEMENT WITH WOODBURY COUNTY, IOWA TO EXCHANGE FIBER OPTIC CONDUIT FOR FIBER WITH THE CITY OF SIOUX CITY. (UNDER HAMILTON BOULEVARD EAST ON MYRTLE STREET TO TRI-VIEW AVENUE)

WHEREAS, the City owns and operates a fiber optic cable from Tri-View Avenue to Stone Park Boulevard on Hamilton Boulevard which fiber optic cable network will be connected to the City's Martin Luther King Fiber room located at 501-529 Nebraska Street within the 2013-2014 calendar years; and

WHEREAS, the City jointly owns empty fiber optic conduits with the Department of Transportation, Long Lines and FiberComm between Myrtle Street and Tri-View Avenue that continues east to Wesley Parkway which fiber conduit will be connected to the City's downtown fiber conduit system within the 2013-2014 calendar years; and

WHEREAS, the County will install 835 feet of 1 - 2" underground conduit under Hamilton Boulevard east on Myrtle Street to Tri-View Boulevard; and

WHEREAS, the County will install 250 feet of 1 - 1 1/4" underground conduit from Myrtle Street to the County's Veteran's Affairs building; and

WHEREAS, the parties have agreed to exchange the use of the above described fiber optic fiber and installation costs of the above described conduits; and

WHEREAS, there is attached hereto and by this reference made a part hereof, a Telecommunications Facilities Exchange Agreement between the City of Sioux City and Woodbury County, Iowa setting forth the rights and responsibilities of the parties, which Telecommunications Facilities Exchange Agreement should be approved as to form and content.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, that the attached Telecommunications Facilities Exchange Agreement by and between the City of Sioux City and Woodbury County, Iowa for exchange of fiber optics, be and the same is hereby approved.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and they are hereby authorized and directed to execute said Telecommunications Facilities Exchange Agreement for and on behalf of the City.

PASSED AND APPROVED: September 23, 2013


Robert E. Scott, Mayor

ATTEST: 
Lisa L. McCardle, City Clerk