



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ADMINISTRATION

MEMORANDUM

TO: Bruce Walden, Chief Administrative Officer

FROM: William R. Gray, P. E., Public Works Director

DATE: September 5, 2002

RE: **Agreement for Use of Right-of-Way
Lincoln Avenue Between Stoughton Street and Hill Street
Church Street Between Lincoln Avenue and Coler Avenue**

INTRODUCTION

Conxxus, L.L.C., has requested the use of Lincoln Avenue right-of-way for the installation of fiber optic cable in three-1¼" diameter and one-1" diameter conduits. They have also requested the use of Church Street right-of-way for the installation of fiber optic cable in two-1¼" diameter conduits. The proposed work location is shown in Exhibit A (attached).

Conxxus has installed fiber optic cable in Champaign and Urbana on state routes.

In order to grant permission to use public right-of-way, a license agreement (attached) is necessary and requires approval from the City Council.

FISCAL IMPACT

The agreement stipulates that the City would receive annually \$1.57 per lineal foot of licensed property as an access fee. All installation and restoration costs are at the expense of Conxxus. City staff will inspect the telecommunication installations.

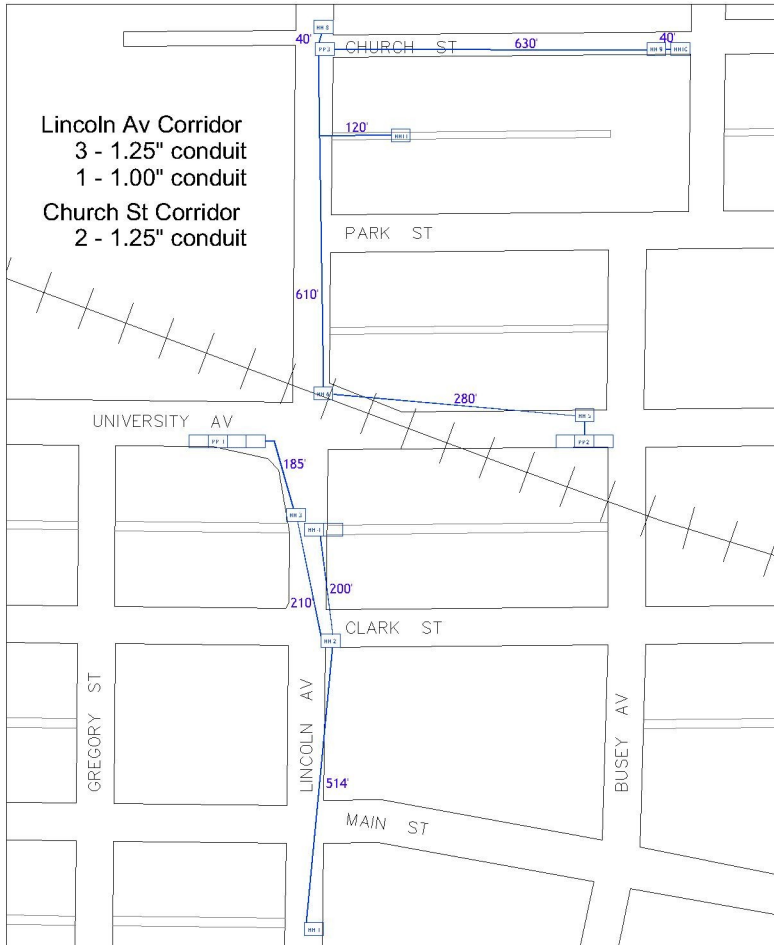
RECOMMENDATION

It is recommended that the Mayor and Clerk be authorized to sign "An Agreement for Use of Right-of-Way" which allows Conxxus, L.L.C., to install telecommunication facilities on Lincoln Avenue and on Church Street.

WRG:klf
Attachments

**ADMINISTRATION · ARBOR · ENGINEERING · ENVIRONMENTAL MANAGEMENT
EQUIPMENT SERVICES · OPERATIONS · PUBLIC FACILITIES**

Lincoln Av Corridor
3 - 1.25" conduit
1 - 1.00" conduit
Church St Corridor
2 - 1.25" conduit



PROPOSED CONXXUS TELECOMMUNICATIONS PROJECT
EXHIBIT A



(Draft 9/5/02)

AGREEMENT FOR USE OF RIGHT-OF-WAY

**(Lincoln Avenue Between Stoughton Street and Hill Street)
(Church Street Between Lincoln Avenue and Coler Avenue)**

THIS AGREEMENT, made and entered into this _____ day of _____, 2002, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Conxxus (hereinafter "Company"),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Company do mutually covenant and agree as follows:

A. Lincoln Avenue is at least a sixty-foot dedicated right-of-way (r.o.w.) between the north r.o.w. of Green Street and the south r.o.w. of Hill Street. Church Street is a forty-foot dedicated r.o.w. between the east r.o.w. of Lincoln Avenue and the west r.o.w. of Busey Avenue and a sixty-foot dedicated r.o.w. between the east r.o.w. of Busey Avenue and the west r.o.w. of Coler Avenue.

B. The Company is herein granted by the City a limited right to install up to three-1¼" conduits and one-1" conduit within the Lincoln Avenue r.o.w. and up to two-1¼" conduits within the Church Street r.o.w. (hereinafter "telecommunications facility"). This limited right is wholly dependent upon the Company, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Company expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Company, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Company of the hereinabove described r-o-w shall at all times be subordinate to the City's use of said r-o-w.

C. The construction and installation of said facility or any change thereof including extension, reduction or removal of the telecommunications facility shall be subject to the issuance of a permit therefore by the Director. No telecommunications facility shall be laid or installed in or under any streets, alleys or other public way until a permit therefore is issued by the Director. Said permit shall indicate the time, manner and place of laying or installing each telecommunications facility. Permit approval shall be granted if the proposed improvements are consistent with the use of the public way granted by this Agreement. Each application for a permit shall be accompanied by prints, plans and maps showing the proposed location of each telecommunications facility to be laid or installed, the location of each conduit to be entered, and the number of manholes or other openings to gain access to said conduit. In the event of an emergency which the Company believes poses a threat of immediate harm to the public or to any of the Company's facilities, the Company shall be permitted access to the public way to

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
(Lincoln Avenue Between Stoughton Street and Hill Street)
(Church Street Between Lincoln Avenue and Coler Avenue)**

ameliorate the threatened harm without the benefit of a permit, provided however the Company shall advise the Municipality of the emergency at its earliest opportunity and seek a proper permit within a reasonable period of time thereafter.

D. The purpose of the herein permitted right to construct upon such r-o-w shall be limited solely to the installation and maintenance of the telecommunications facility in said r-o-w, which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director"), this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

E. The Company, after doing any telecommunications facility work shall, at its sole cost and expense, promptly repair and restore the site including all sidewalks, parkways or pavements disturbed by the Company to the condition in which it existed prior to the performance of the work, or nearly as practicable as determined by the City in the exercise of its reasonable discretion. In the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Company, then the Company, as soon as climatic conditions will permit shall promptly, upon receipt of notice from the City so to do, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by the Company. Such restoration shall be completed within ten (10) days after the date of commencement of such restoration work. In the event that the Company fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City may, but shall have no obligation to, perform such work and recover from the Company any costs and expenses the City incurs. In the event that such public way or improvement cannot be so repaired, replaced or restored, the Company shall justly compensate the City. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped and then restored within a reasonable time thereafter to the original condition with sod or hydroseed in accordance with the applicable provisions of this Agreement. The Company shall keep all structures which it shall construct by virtue of this Agreement, in a reasonably safe condition at all times, and shall maintain such traffic control and protection during the construction, repair or renewal work performed hereunder as will reasonably avoid danger to life, limb and property. Any damage caused by the Company to any other utility including storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or any facilities from any other utility company shall, at its sole cost and expense, promptly repair and restore said damaged facility.

F. In the event of an emergency, defined as imminent peril to person or property, or when the Company has inadequately complied with an order of the Director pursuant to Paragraph (B) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (B) impracticable under the circumstances present, the Company consents and agrees that the City or its duly authorized agent may remove the telecommunications facility, or any portion thereof, and charge all costs and expenses incurred in

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
(Lincoln Avenue Between Stoughton Street and Hill Street)
(Church Street Between Lincoln Avenue and Coler Avenue)**

such removal, disposal, and restoration to the Company. Should the Company fail in any way to make timely payment to the City for such costs and expenses, the Company agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

G. The Company agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Company shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

H. The Company acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the telecommunications facility.

I. The Company shall provide to the City, upon completion of the installation of the telecommunications facility as-built plans.

J. Annual payments shall be made to the City in the amount of one dollar and fifty-seven cents (\$1.57) per lineal foot of licensed property. The amounts herein set for compensation shall, on January first of each year beginning January 1, 2003, be adjusted by the Consumer Price Index published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.

K. The license granted pursuant to this article may not be transferred without the express written consent of the City.

L. The license shall be non-exclusive. No license granted under this authority shall confer any exclusive right, privilege, or license to occupy the rights-of-way for any purpose.

M. No license granted under this authority shall convey any right, title, or interest in rights-of-way but shall be deemed a license only to use and occupy the r-o-w for the limited purposes and term stated on the grant. No license granted under this authority shall be construed as any warranty of title.

N. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
(Lincoln Avenue Between Stoughton Street and Hill Street)
(Church Street Between Lincoln Avenue and Coler Avenue)**

O. Notices transmitted to either party to this agreement shall be addressed as follows:

<u>To the City:</u>	Mayor City of Urbana 400 South Vine Street Urbana, Illinois 61801	Chief Administrative Officer City of Urbana 400 South Vine Street Urbana, Illinois 61801
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To the Company: Conxxus L.L.C.
Attention: Manager
330 West Ottawa Road
Paxton, Illinois 60957

Either party may designate by written notice a different address to which notices shall be sent.

P. The Company shall not be excused from complying with any of the terms and conditions of this Franchise Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Q. This agreement shall remain in effect for twenty (20) years.

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
(Lincoln Avenue Between Stoughton Street and Hill Street)
(Church Street Between Lincoln Avenue and Coler Avenue)**

CITY OF URBANA, ILLINOIS

By: _____
Tod Satterthwaite, Mayor

ATTEST:

Phyllis Clark, City Clerk

* * *

CONXXUS

By: _____
(Signature)

(Print Name & Title)

ATTEST:

Secretary *(Signature)*

(Print Name)

* * *

Prepared by and please return recorded copy to:

*Jack Waaler, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801*