



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: October 6, 2016
RE: Consolidated Communications Agreement for Use of Right-of-Way

Action Requested

Approval of the attached ordinance entitled "AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC."

Background and Facts

On February 18, 2013, the City Council approved and the Mayor executed a use of right-of-way (ROW) agreement with Champaign Telephone Company (CTC) of Champaign, Illinois, to authorize the installation of fiber optic cables below ground in conduits within the rights-of-way of the City. Consolidated Communications, based out of Mattoon, Illinois, acquired the Champaign Telephone Company on July 1, 2016.

Consolidated Communications has decided to expand its fiber optic infrastructure build out beyond the limits defined in the exhibits included as part of the original CTC ROW agreement. The additional infrastructure installations and ownership change require the execution of a new agreement (attached) between the City and Consolidated Communications. The new agreement would also cover all the fiber optic facilities that CTC had installed to date in the City ROW under the previous license agreement. The new agreement would have a termination period of 20 years from the date the agreement is executed.

Financial Impact

The proposed installation will be at no cost to the City. City staff time to administer the agreement and inspect the ROW during the construction will be an indirect cost. Consolidated Communications is not subject to the City's utility maintenance fee for right-of-way occupation because it is a retailer of telecommunications services as defined under the Illinois Simplified Telecommunications Tax Act.

Recommendations

It is recommended that the City Council approve the attached ordinance entitled, "AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC."

Attachments: AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC.

RIGHT-OF-WAY LICENSE AGREEMENT (Consolidated Communications Enterprise Services, Inc.)

ORDINANCE NO. 2016-10-099

AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. A Right-of-Way License Agreement between the City of Urbana, Illinois, and Consolidated Communications Enterprise Services, Inc., in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3. This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

Mail recorded document to:

City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801

City of Urbana – Champaign County

RIGHT-OF-WAY LICENSE AGREEMENT

**Consolidated Communications Enterprise Services, Inc.
121 South 17th Street
Mattoon, Illinois 61938-3915**

August 2016

RIGHT-OF-WAY LICENSE AGREEMENT

This agreement is made between Consolidated Communications Enterprise Services, Inc., a Delaware corporation (“Company”), and the City of Urbana, an Illinois municipal corporation (“City”), each a “party” and together the “parties,” and is effective on the last date signed by a party hereto. The Company and the City agree as follows:

1. **Grant of license.** The City hereby grants and the Company hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, operate, repair, and remove a facility (“Facility”) consisting of fiber optic cable, conduits, suitable handholes, and above and belowground pedestals, as described in Exhibit A and shown in Exhibit B, within the public right-of-way (“Licensed Property”) designated in Exhibit C.

- A. The license gives the Company permission to use the Licensed Property for the limited purposes and term stated in this agreement. The license is not a warranty of title and does not convey any right, title, or interest in the Licensed Property.
- B. The license is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements in and about the Licensed Property.
- C. The Company shall fully and faithfully perform and comply with all terms, conditions, and covenants contained in this agreement. If the Company fails to perform or comply with any term, condition, or covenant herein, the City is permitted to revoke the license after giving the Company a period in which to cure such failure as set forth in this agreement.
- D. The Company shall not transfer or assign the license.
- E. The license is non-exclusive and at all times subordinate to the City's and the public's use of the Licensed Property for purposes normally associated with a public right-of-way. Accordingly, if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to the Licensed Property, the Company shall, at its sole cost, relocate or remove all or any portion of the Facility not more than ninety (90) days after the City's Public Works Director (“Director”) directs such relocation or removal in writing.
- F. The Company shall use its best efforts to maintain contractors on any work project involving the Facility and to work toward its timely completion, barring inclement weather or other situations beyond the Company's control.

2. **Term; termination.** This agreement is binding upon the parties hereto for a term of twenty (20) years commencing as of its effective date, unless sooner terminated

in accordance with this agreement. This agreement may be terminated at any time without notice upon the express written consent of both parties. Either party is permitted to terminate this agreement for cause by giving written notice to the other party at least forty-five (45) days prior to the proposed termination. Such party shall specify the reason or reasons for such termination in the written notice and shall specifically state that such termination will become effective thirty (30) days after the date thereof if the reason or reasons for such notice of termination are not fully and completely cured.

3. **Simplified Municipal Telecommunications Tax.** The Company is a retailer of telecommunications services, as contemplated under the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 *et seq.*), as amended, and collects the taxes provided for under that Act and any other taxes that it may be required by law to collect. Accordingly, the Company is exempt from any licensing or right-of-way permit fees.

4. **Installation.** The Company warrants that installation of the Facility will be done and completed in a good and competent manner, in accordance with all requirements of law, and at no expense to the City.

5. **Plan submission.** Upon completion of construction of the Facility, or each segment thereof, the Company shall provide as-built plans to the City in an electronic format compatible with the City's Geographic Information System.

6. **Maintenance.** The Company shall maintain the Facility in good and safe condition and in a manner that complies with all applicable laws.

7. **Repair.** After doing any work, the Company at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by the Company, including without limitation all sidewalks, parkways, or pavements, to their original condition or better in accordance with the specifications of the City.

- A. If any such sidewalk, parkway, or pavement becomes uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Company, the Company, as soon as climatic conditions reasonably permit, shall promptly, and no more than fifteen (15) days from receipt of notice from the City to do so, cause such sidewalk, parkway, or pavement to be repaired or restored. The Company shall complete such restoration no more than (10) days after the date of commencement of such restoration work. If the Company fails to commence and complete the restoration work in the manner and within the times prescribed herein, the City is permitted to perform such work, and the Company shall pay any costs and expenses the City incurs upon written demand by the City.
- B. If such right-of-way or improvement cannot be so repaired, replaced, or restored, the Company shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect, engineer, or contractor mutually agreed upon by the parties.

- C. Within a reasonable time after completion of any excavations in lawns or grassy parkways, the Company shall backfill, tamp, and restore with seed or mulch all disturbed areas to at least as good a condition as existing immediately preceding the excavation.
- D. At the Director's discretion, the Company shall repair or replace any shrubs, bushes, or trees existing within the Licensed Property that are disturbed by reason of the construction, maintenance, or repair of the Facility.
- E. The Company shall promptly repair and restore at its own expense all damage it causes to any other utility, including but not limited to storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or facilities from any other utility company.
- F. The provisions in this Paragraph 7 will survive the termination of this agreement.

8. Removal.

- A. The City is permitted to remove and dispose of the Facility, or any portion thereof, upon occurrence of any of the following:
 - (1) an emergency that presents imminent peril to person or property;
 - (2) the Company's non-compliance with any term, provision, or covenant in this agreement that is not cured within the time provided herein following notice of such non-compliance tendered to the Company;
 - (3) the Director or other responsible City official, in good faith, deems the procedure in Paragraph 7 impracticable under the circumstances present;
 - (4) termination of this agreement for any reason;
 - (5) the Company's abandonment of the Facility's in accordance with the provisions in Paragraph 9 of this agreement; or
 - (6) expiration of this agreement in the absence of any renewal thereof.
- B. The Company shall bear all costs and expenses incurred in the removal and disposal of the Facility and the restoration of the Licensed Property.
- C. If the Company fails in any way to make timely payment to the City for such costs and expenses, the Company shall pay, in addition to any amount so owed, the City's reasonable attorneys' fees and court costs incurred in the collection of such amount. This provision will survive the termination of this agreement.

9. **Lapse and termination.** The license herein granted is limited to the construction, maintenance, operation, repair, and removal of the Facility. Any additional use other than that specifically named herein, without the further express written consent of the City, is a violation of this agreement. Upon cessation of such use, as determined by the Director, this agreement immediately and automatically will lapse and terminate. If the Director believes the Company is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Company in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice will state that the Company has thirty (30) days to reassert its rights under this agreement and demonstrate that it has not in fact abandoned the license granted by this agreement. If the Company demonstrates within the thirty (30) day period that it has not abandoned the Facility, this agreement will remain in force and effect according to its terms. If the Company does not demonstrate within the thirty (30) day period that it has not abandoned the Facility, this agreement will be deemed lapsed, terminated, and no longer in effect.

10. **Indemnification.** The Company, at its sole cost and expense, shall defend and indemnify the City from and against any and all losses, damage, claims or liability whatsoever for or in connection with the death or injury to any person or damage to any property in connection with the Company's construction, maintenance, repair, use, or removal of the Facility, unless such losses, damage, claims or liability arises solely from a negligent or intentional act or omission by the City or any of its employees, agents or contractors. This provision will survive the termination of this agreement.

11. **Entire agreement; amendment.** This agreement, together with its attachments, constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be amended except by a writing signed by both parties.

12. **Notices.** All notices required under this agreement must be in writing. Notices must be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the respective party as shown below, or to any changed address either party may have fixed by notice. Notice will be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice will be deemed given on the date of the mailing. Either party may designate by written notice a different address to which notices must be sent.

To the Company: Consolidated Communications Enterprise Services, Inc.
Attention: OSP Manger
121 South 17th Street
Mattoon, Illinois 61938-3915

To the City: Public Works Director
 City of Urbana
 706 S. Glover Avenue
 Urbana, Illinois 61802

13. **Governing Law.** This agreement will be construed in accordance with the laws of the State of Illinois. Any action to interpret, construe, or enforce this agreement will be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

14. **Non-waiver.** Either party's failure to enforce any provision of this agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any provision of this agreement is valid only if in writing and signed by the parties.

15. **Compliance with governmental requirements.**

A. **Right-of-way permit.**

(1) Except in an emergency as provided in this agreement, the Company shall obtain a right-of-way permit from the City before constructing, installing, extending, removing, or otherwise changing the Facility. The permit will indicate the time, manner, and place of the work to be performed. Along with each application for a permit, the Company shall provide prints, plans and maps showing the proposed location and design of the Facility to be constructed, the location of each conduit to be entered, and the number and placement of handholes or other openings to gain access to said conduit, along with the appropriate surety bond, insurance certificate, and permit fees required by the Urbana City Code. The Company shall comply with all conditions of any permits issued to it.

(2) In an emergency that the Company believes poses a threat of immediate harm to the public or to any of the Company's facilities, the Company is permitted access to the public way to mitigate the threatened harm without the benefit of a permit; provided, however, the Company shall advise the City of the emergency at the earliest reasonable opportunity and shall seek a proper permit within a reasonable period of time thereafter and in the manner as hereinbefore stated.

B. **Applicable law.** The Company shall comply with all applicable laws, ordinances, regulations, and requirements of federal, state, county, and local regulatory authorities, including without limitation the applicable provisions of the Urbana City Code regarding rights-of-way and their uses, all of which as may be amended from time to time.

16. **No presumption.** Each party hereto acknowledges that this agreement is the product of good faith negotiations by and between the parties hereto and, as such, nei-

ther party may seek to have this agreement strictly construed against the other party as drafter of this agreement.

17. **Due Authorization.** Each party represents to the other that the person or persons signing this agreement on behalf of the party is authorized and empowered to enter into this agreement by and on behalf of such party and that this agreement is a legal, valid, and binding obligation of such party, enforceable against the other in accordance with its terms.

18. **Recording.** This agreement will be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the Company.

19. **Counterparts.** The parties are permitted to sign this agreement in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures delivered by email in Adobe Portable Document Format (PDF) or by facsimile will be deemed original signatures for all purposes.

The parties are signing this agreement on the dates indicated below their signatures.

Consolidated Communications Enterprise Services, Inc.

City of Urbana, Illinois

By: _____
Michael W. Smith
Chief Marketing Officer
Date:

By: _____
Laurel Lunt Prussing
Mayor
Date:

Attest:

Phyllis Clark
City Clerk

STATE OF _____)
)
COUNTY OF _____) ss.

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Michael W. Smith, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument in his capacity as the duly authorized Chief Marketing Officer of Consolidated Communications Enterprise Services, Inc. as his free and voluntary act, and the free and voluntary act of Consolidated Communications Enterprise Services, Inc. for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____ 2016.

Notary Public

Attachments: Exhibit A Path descriptions (3 pages)
Exhibit B Segment maps (4 pages)
Exhibit C Licensed Property (1 page)

Exhibit A

Path Descriptions

Path A-1

Path A-1 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-4074 at 2404 North Shore Drive (N40° 08' 16.15" W88° 13' 19.51") and crosses 41 feet under North Shore Drive to (N40° 08' 16.15" W88° 13' 20.03") before heading north in the ROW on the west side of North Shore Drive for 222 feet, ending in a manhole at 2405 North Shore Drive (N40° 08' 18.13" W88° 13' 20.11").

Path A-2

Path A-2 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3385 at 1003 West Kenyon Road (N40° 07' 59.72" W88° 13' 21.48") and proceeds west in the ROW on the south side of West Kenyon Road for 207 feet ending at 1111 West Kenyon Road (N40° 07' 59.39" W88° 13' 23.76").

Path A-3

Path A-3 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3384 (N40° 07' 56.10" W88° 13' 10.93") on the southwest corner of North Lincoln Avenue and West Killarney Street and then proceeds south in the ROW on the west side of Lincoln Avenue for 214 feet to 2011 North Lincoln Avenue (N40° 07' 54.07" W88° 13' 10.89"). Path A-3 then goes east under Lincoln Avenue for 95 feet to 2010 North Lincoln Avenue (N40° 07' 54.00" W88° 13' 09.68").

Path A-4

Path A-4 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-576 at 1407 North Lincoln Avenue (N40° 07' 32.18" W88° 13' 10.42") on the west side of North Lincoln Avenue and crosses east under North Lincoln Avenue for 57 feet to UC2B HH-3378 (N40° 07' 32.18" W88° 13' 09.76"). Path A-4 then proceeds north for 203 feet in the ROW on the east side of North Lincoln Avenue ending at 1500 North Lincoln Avenue (N40° 07' 34.19" W88° 13' 09.71").

Path A-5

Path A-4 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3648 at 1405 West Kenyon Road (N40° 08' 04.35" W88° 13' 40.78") and proceeds west in the ROW on the south side of West Kenyon Road for 313 feet ending at 1417 West Kenyon Road (N40° 08' 04.28" W88° 13' 44.78").

Path B-1

Path B-1 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3879 (N40° 08' 17.79" W88° 12' 03.33") at the northwest corner of North Willow Road and Beason Road and crosses Willow Road to the east for 52 feet to UC2B Manhole HH-705 (N40° 08' 17.85" W88° 12' 02.60"). Path B-1 then goes north a total of 1,168 Feet in the right of way on the east side of North Willow Road through Manhole HH-3880 (N40° 08' 24.84" W88° 12' 02.66"), then through UC2B manhole HH-3881 (N40° 08' 30.26" W88° 12' 02.75") before proceeding north to 906 Airport Road (N40° 08' 34.24" W88° 12' 02.63").

Path C-1

Path C-1 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3930 at 111 West Main Street (N40° 06' 42.08" W88° 12' 30.30") and proceeds north for 12 feet.

Path C-2

Path C-2 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3932 at 201 West Springfield Avenue (N40° 06' 41.46" W88° 12' 34.03") and proceeds west for 210 feet through UC2B HH-299 (N40° 06' 41.46" W88° 12' 34.03") Path C-2 then goes north and cross Elm Street for 40 feet and then west for 126 feet, ending in UC2B HH-3956 at the northwest corner of West Elm Street and South Cedar Street (N40° 06' 41.78" W88° 12' 37.62"). Path C-2 then proceeds north in the ROW on the west side of South Cedar street for 171 feet before entering private property at 301 West Springfield Avenue (N40° 06' 43.47" W88° 12' 37.64").

Path C-3

Path C-3 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3332 at the northeast corner of East Illinois Street and South Vine Street (N40° 06' 33.65" W88° 12' 17.12") and proceeds south in the ROW on the east side of South Vine Street for 351 feet ending in UC2B manhole HH-4029 at the southeast corner of South Vine Street and East California Avenue (N40° 06' 30.28" W88° 12' 16.94"). Path C-3 continues in UC2B manhole HH-4029 (N40° 06' 30.28" W88° 12' 17.12") and proceed east in the ROW on the south side of East California Avenue for 71 feet to 602 South Vine Street (N40° 06' 30.21" W88° 12' 16.29").

Path C-4

Path C-4 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B manhole HH-3559 at the southwest corner of South Gregory Street and West Green Street (N40° 06' 37.39" W88° 13' 14.00") and goes north across West Green Street for 177 feet to UC2B manhole HH-3901 at 1002 West Green Street (N40° 06' 39.10" W88° 13' 14.18"). Path C-4 then goes east across Gregory Street for 43 feet to 904 West Green Street (N40° 06' 39.18" W88° 13' 13.59").

Path C-5

Path C-5 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B Manhole HH 1093 at the southwest corner of North Cunningham Avenue and East Kerr Avenue (N40° 07' 18.30" W88° 12' 07.90") and crosses under North Cunningham Avenue to the east for 78 feet to (N40° 07' 18.26" W88° 12' 06.81"). Path C-5 then proceeds northeast in ROW on the east side of Cunningham for 171 feet to (N40° 07' 18.99" W88° 12' 05.39"). Path C-5 then cross Kerr Ave to the north 49 feet before ending at 1002 North Cunningham Avenue (N40° 07' 19.46" W88° 12'05.39").

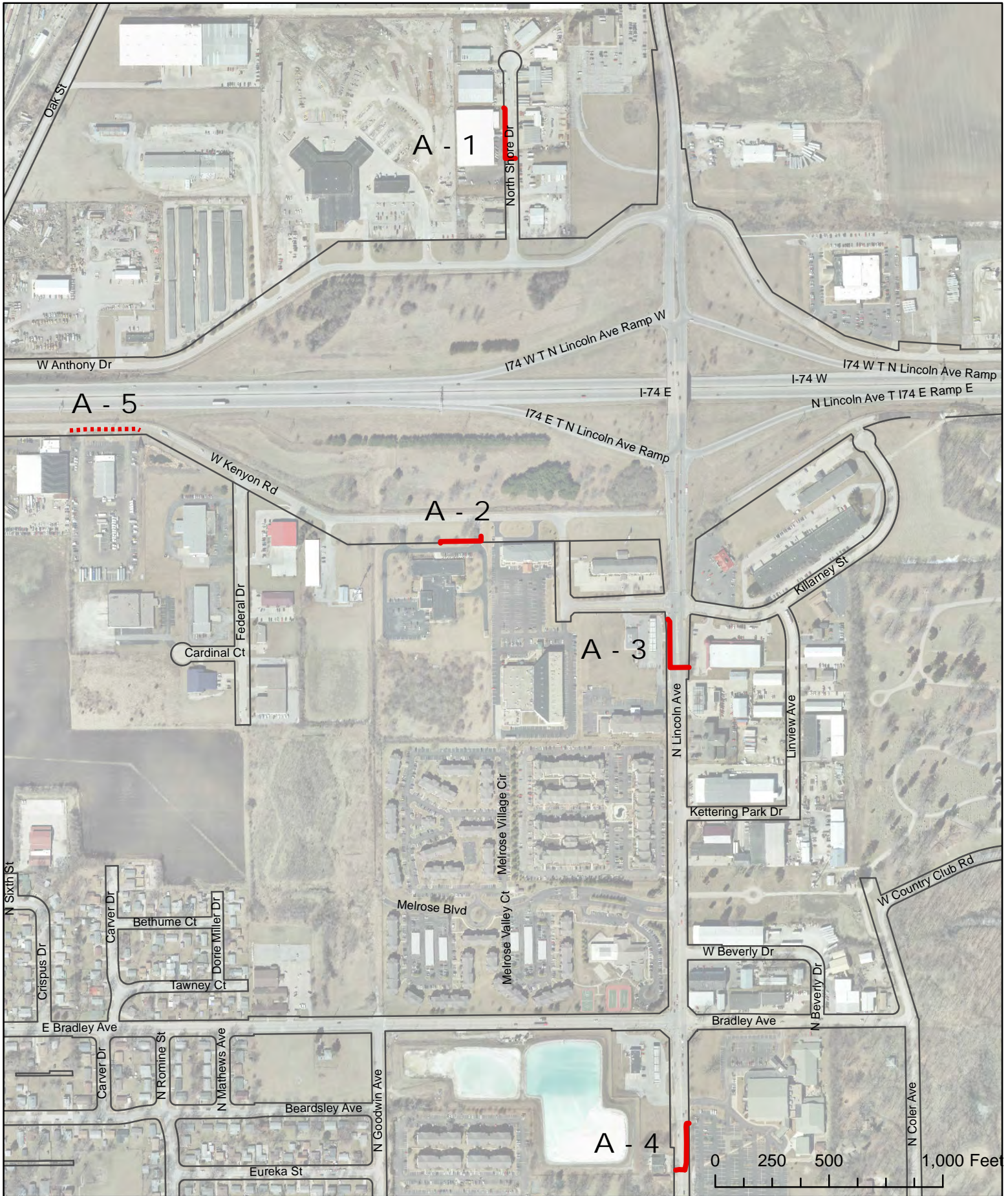
Path D-1

Path D-1 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber that begins in UC2B Manhole HH-3469 at 1710 East Windsor Road (N40° 05' 02.25" W88° 11' 10.25") and continues west for 489 feet to the northeast corner of Boulder Drive and East Windsor Road (N40° 05' 02.30" W88° 11' 16.58"). Path D-1 then crosses under East Windsor Road for 376 feet to the south to (N40° 04' 58.57" W88° 11' 16.11"). Path D-1 then crosses Boulder Drive to the west for 92 feet ending at 2709 Boulder Drive (N40° 04' 58.25" W88° 11' 16.70").

Path D-2

Path D-2 includes 1.25-inch conduit and 12 strands of Mini-Flex fiber Lateral that begins in UC2B manhole HH-295 at 1806 South Philo Road (N40° 05' 47.52" W88° 11' 26.05") and goes south in the ROW on the East side of Philo Road for 197 feet to UC2B HH-4030 at 1812 South Philo Road(N40° 05' 45.57" W88° 11' 26.00").

Each path also includes suitable handholes and pedestals as needed to meet reasonable customer and network management needs in the least intrusive manner feasible. Aboveground pedestals will be used where existing utilities use aboveground pedestals and belowground space is not required. Standard depth for the buried portions is at least thirty-six (36) inches below finished grade.



Legend

- Existing Fiber
- - - Proposed Fiber
- Right of Way

Consolidated Communications
 Exhibit "B" - Path maps
 License Agreement





Legend

- Existing Fiber
- Right of Way

Consolidated Communications
 Exhibit "B" - Path maps
 License Agreement





Legend

- Existing Fiber
- Right of Way

Consolidated Communications
 Exhibit "B" - Path maps
 License Agreement



Exhibit C

Streets Affected

Willow Road from Beeson Road to the north end of Willow Road

East Windsor Road from South Philo Road to South Myra Ridge Drive

Boulder Drive from Windsor Road to south end of Boulder Drive

North Cunningham Avenue from Barr Avenue to East Kerr Avenue

East Kerr Avenue from North Cunningham Avenue to North Boyden Street

South Gregory Street from West Green Street to Western Avenue

Kenyon Road from Oak Street to West Killarney Street

North Lincoln Avenue from Bradley Avenue to Sunset Drive

North Lincoln Avenue from Killarney Street to Kettering Park Drive

West Elm Street from South Broadway Avenue to South Cedar Street

North Shore Drive from Anthony Drive to the north end of North Shore Drive

South Philo Road from Colorado Avenue to East Florida Avenue

South Cedar Street from West Elm Street to Springfield Avenue

South Vine Street from East California Avenue to East Illinois Street

East California Avenue from South Vine Street to Urbana Avenue