



## 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:** Metro Communications Company, Inc., Agreement for Use of Right-of-Way

### Action Requested

Approval of the attached ordinance entitled "AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT WITH METRO COMMUNICATIONS COMPANY."

### Background and Facts

On July 20, 2015, the City Council approved and the Mayor executed a use of right-of-way (ROW) agreement with Metro Communications Company of Sullivan, Illinois, to authorize the installation of fiber optic cables below ground in conduits within the rights-of-way of the City.

Metro Communications has decided to expand its fiber optic infrastructure build out beyond the limits defined in the exhibits included as part of the original ROW agreement. The additional infrastructure installations require the execution of a new agreement (attached) between the City and Metro Communications. The new agreement would also cover all the fiber optic facilities that Metro Communications has 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. Please note that the proposed Metro Communications Company facilities will be located in conduits shared with the Campus Communications Group (aka Pavlov Media).

### 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. Metro Communications Company 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 AN AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT WITH METRO COMMUNICATIONS COMPANY".

Attachments: AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT WITH METRO COMMUNICATIONS COMPANY

AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT (Metro Communications Company, Inc.)

ORDINANCE NO. 2016-10-098

AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY  
LICENSE AGREEMENT WITH METRO COMMUNICATIONS COMPANY

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

**Section 1.** An Amended and Restated Right-of-Way License Agreement between the City of Urbana, Illinois, and Metro Communications Company, 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

**AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT**

---

**Metro Communications Company  
8 South Washington Street, Suite 200  
Sullivan, Illinois 61951-2069**

August 2016

## **AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT**

Metro Communications Company, a Missouri corporation (the “Company”), and the City of Urbana, an Illinois municipal corporation (the “City”), each a “party” and together the “parties,” mutually agree to restate and amend the Agreement for Use of Right-of-Way, authorized by Ordinance No. 2012-12-114, the First Amendment to Agreement for Use of Right-of-Way, authorized by Ordinance No. 2013-01-006, the Agreement for Use of Right-of-Way, authorized by Ordinance No. 2015-07-073, and Amendment No. 1 to Agreement for Use of Right-of-Way, authorized by Ordinance No. 2015-09-101. Therefore, the Amended and Restated Right-of-Way License Agreement is to read in its entirety 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, HDPE conduits, suitable handholes, and above and below-ground 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.** If the Company becomes a retailer of telecommunications services in the City by transmitting, supplying, or furnishing telecommunications, including without limitation internet services, data services, local telephone services, or long distance services, as contemplated under the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 *et seq.*) as amended, the Company shall provide written proof thereof to the City and, as soon as practicable thereafter, commence collection of the taxes provided for under that Act and any other taxes that it may be required by law to collect.

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. This agreement supersedes all agreements or understandings between the City and MCC Network Services, LLC, an Illinois limited liability company, which is wholly owned by the Company, pertaining to the matter of this agreement.

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.

Metro Communications Company

Jolene Wright  
Permit Coordinator  
Metro Communications  
8 S. Washington Street, Suite 200  
Sullivan, Illinois 61951-2069

City of Urbana

Director of Public Works  
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 manholes 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 reg-

ulatory authorities, including without limitation the applicable provisions of the Urbana City Code regarding rights-of-way and their uses, 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, neither 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.

Metro Communications Company

City of Urbana, Illinois

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

Zachary Horn

President

Date:

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

Laurel Lunt Prussing

Mayor

Date:

Attest:

\_\_\_\_\_  
Phyllis Clark

City Clerk



## **Exhibit A**

### **Path Descriptions**

#### **Path A-1**

Path A-1 starts at the northwest corner of University Avenue and North Lincoln Avenue running north along the west side of North Lincoln Avenue for 4,518 feet where the path ends just north of West Beverly Drive. Path A-1 includes two 1-inch fiber optic high density polyethylene (HDPE) conduits. One conduit contains 72-count fiber optic cable. The other conduit is an empty spare conduit.

#### **Path A-2**

Path A-2 starts on the northwest corner of University Avenue and North Goodwin Avenue running south along the west side of Goodwin Avenue for 960 feet where the path ends just south of vacated Main Street. Path A-2 includes two 1-inch fiber optic HDPE conduits. One conduit contains 72-count fiber optic cable. The other conduit is an empty spare conduit.

#### **Path B-1**

Path B-1 begins at the southeast corner of North Vine Street and University Avenue running south along the east side of Vine Street for 900 feet. Path B-1 then crosses from the east side to the west side of Vine Street. Path B-1 continues running south along the west side of Vine Street for 2,040 feet to 601 South Vine Street. Path B-1 includes two 1-inch fiber optic HDPE conduits. One conduit contains 72-count fiber optic cable. The other conduit is an empty spare conduit.

#### **Path B-2**

Path B-2 begins at the northwest corner of North Vine Street and East Water Street running west along the north side of East Water Street for 460 feet to the northeast corner of East Water Street and North Broadway Avenue. Path B-2 then crosses from the north side to the south side of East Water Street to the south east corner of North Broadway Avenue and East Water Street. Path B-2 includes two 1-inch fiber optic HDPE conduits. One conduit contains 72-count fiber optic cable. The other conduit is an empty spare conduit.

#### **Path C-1**

Path C-1 begins at the northwest corner of West Florida Avenue and South Race running south along the west side of South Race Street for 5,740 feet to 2711 South Race Street south of the intersection of West Windsor Road and South Race Street. Path C-1 includes three 1 ¼ -inch fiber optic HDPE conduits. One conduit contains 144-count fiber optic cable. The other conduits are empty spare conduits.

#### **Path D-1**

Path D-1 begins at the northeast corner of East Florida Avenue and Philo Road running south along the east side of Philo Road for 1,300 feet to the northeast corner of Colorado Avenue and Philo Road. Path D-1 then turns and runs 550 feet to the east along the north side of Colorado Avenue to 1508 Colorado Avenue. Path D-1 includes two 1-inch fiber optic HDPE conduits. One conduit contains 48-count fiber optic cable. The other conduit is an empty spare conduit.

**Path E-1**

Path E-1 begins at the northwest corner of West Florida Avenue and North Lincoln Avenue running east along the north side of Florida Avenue for 8,060 feet to the northeast corner of East Florida Avenue and Philo Road. Path E-1 includes two 1 ¼ -inch fiber optic HDPE conduits. One conduit contains 72-count fiber optic cable. The other conduit is an empty spare conduit.

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

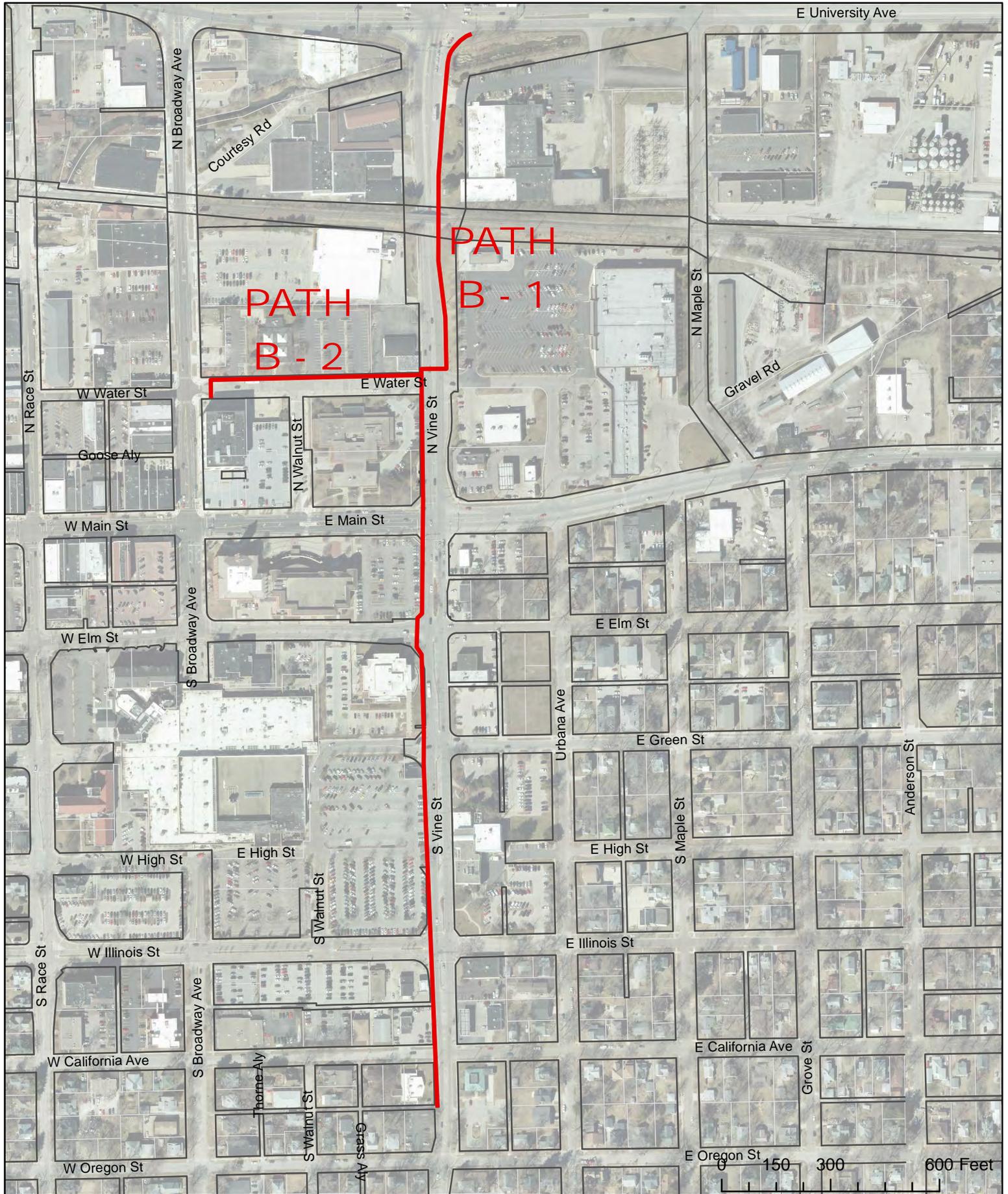


**Legend**

- Existing Underground Fiber Utility
- Right of Way

Metro Communications Co  
 Exhibit "B" - Path maps  
 License Agreement



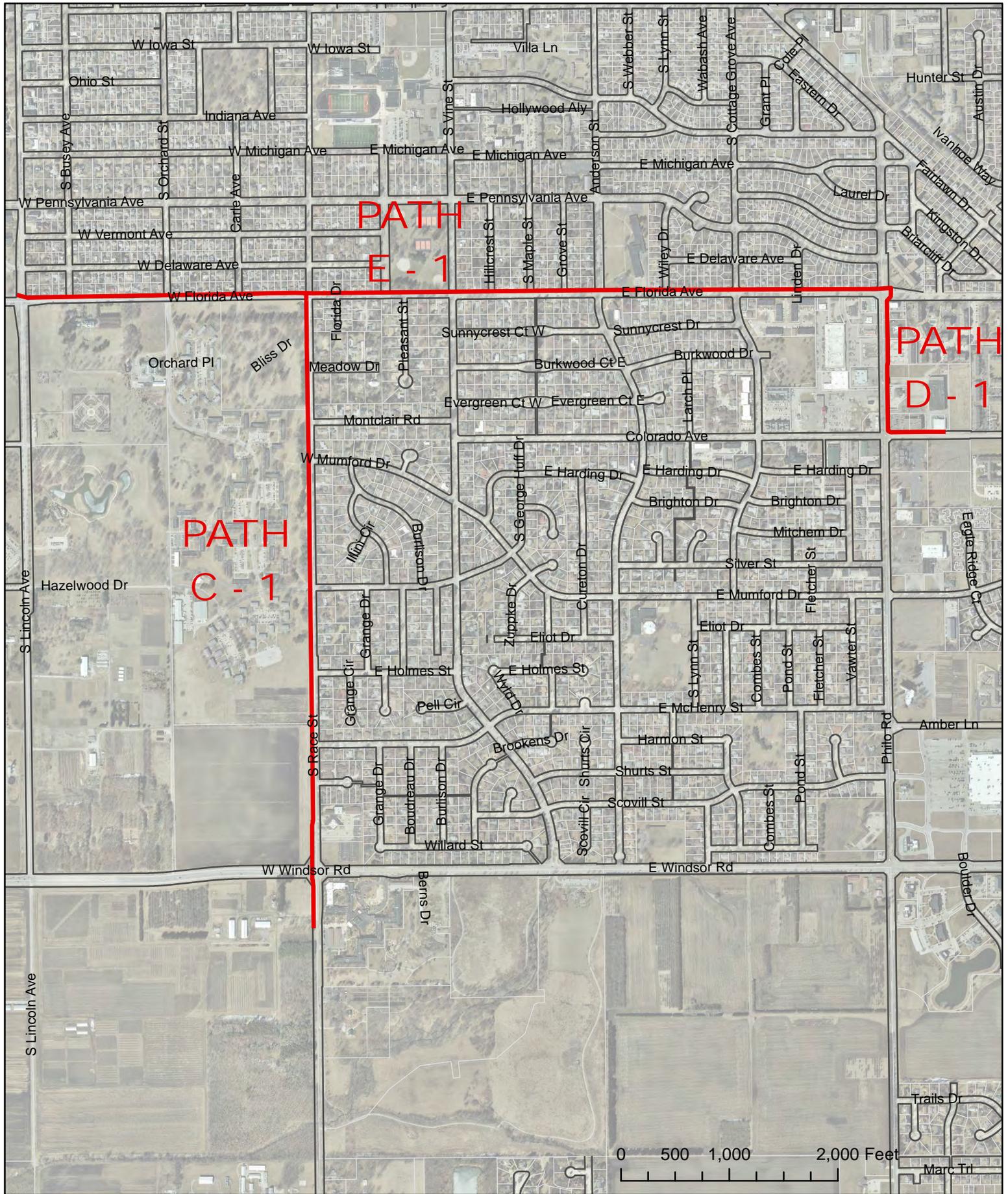


**Legend**

- Existing Underground Fiber Utility
- Right of Way

Metro Communications Co  
 Exhibit "B" - Path maps  
 License Agreement





**Legend**

- Existing Underground Fiber Utility
- Right of Way

Metro Communications Co  
 Exhibit "B" - Path maps  
 License Agreement



## **Exhibit C**

### **Licensed Property**

North Lincoln Avenue from Beverly Drive to University Avenue

North Goodwin Avenue from University Avenue to Stoughton Street

Vine Street from University Avenue to West Oregon Street

East Water Street from South Broadway Avenue to North Vine Street

South Race Street from West Florida Avenue to south of West Windsor Road

South Philo Road from East Florida Avenue to Colorado Avenue

Colorado Avenue from Philo Road to Prairie Winds Drive