

AGREEMENT FOR THE LEASE OF CITY CONDUIT
between
THE CITY OF LEE'S SUMMIT AND LEE'S SUMMIT R7 SCHOOL DISTRICT

This AGREEMENT FOR THE LEASE OF CITY CONDUIT (this "Agreement") is made and entered into by and between the City of Lee's Summit, Missouri, a Missouri Municipal Corporation, (the "City") and Lee's Summit R7 School District, a Missouri political subdivision (the "District"). The City and District may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

- A. The District owns, operates and maintains a fiber network in the District's service area to provide network communications between its buildings. The District desires to establish new network connections within the City. In order to accomplish this, the District wishes to lease unused conduit from the City.
- B. The District currently leases certain strands of its fiber throughout its network to the City for use in City network communications.
- C. The City owns certain underground conduit facilities, along with necessary handholes and manholes for access, located within the boundaries of the city of Lee's Summit consisting of as few as one and as many as four separate, but co-located, conduits that are typically used for routing wiring or fiber optic cable ("City Conduit").
- D. The City desires to lease one unused conduit within the Tudor Rd. Bridge over the Union Pacific Railroad as shown in **Exhibit A**, including access rights to the handholes and manholes along the route shown in **Exhibit A** to the District for the use within the District's network.
- E. The City also desires to permit the District to install its fiber network in the leased conduit for its network purposes, and the benefits it will provide the City as a whole, as well as to minimize disruption to the right-of-way installation of a separate conduit would entail.
- F. Political Subdivisions may enter into contracts for mutual benefit under Missouri law as provided for in Section 70.220, RSMo, provided such agreement is approved by a majority of the governing board of each political subdivision as required by Section 70.300, RSMo.

AGREEMENT

In consideration of the mutual covenants, terms, conditions and obligations contained herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference as a part of this Agreement.
2. **Definitions.** As used in this Agreement, the following words and phrases shall have the meaning given in this Section. When not inconsistent with context, words used in the present tense include

the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Section shall be defined as provided for in the City Codified City Code, Chapter 26, Article III titled “Right-of-Way Management” and its Construction Design Manual and if, undefined there, given their common and ordinary meaning.

- A. “Lease Area” means the conduit described in Exhibit A.
- B. “Telecommunications Services” means the electronic or optical transmission of information, data or pulse of any kind to convey information between separate points by prearranged means.
- C. “District Fiber” means the fiber optic cable installed by the District in the Leased Conduit, pursuant to the terms of this Agreement, for the District to meet its network connectivity needs for the delivery of its Telecommunications Services.

3. Lease of Conduit; Access to Public Rights-of-Way.

A. Lease of City Conduit. The City hereby leases, demises and sets off to the District one (1) City Conduit in the segments described in **Exhibit A**, attached hereto and incorporated herein by this reference. The conduit leased will be the northern most conduit in the north barrier wall. Any dispute as to its location shall be determined by the City Engineer.

B. Access to Public Rights-of-Way. Pursuant to this License which City hereby finds to be consistent with similarly situated users, City grants to the District a non-exclusive access to install fiber as approved prior to installation into the Conduit, and to make reasonable and lawful use of the Public Rights-of-Way within the City, to connect any fiber installed in the leased area to its existing fiber optic network within the City. The City reserves the right to grant similar leases, uses, franchises, permits or any other rights with regard to the Public Rights-of-Way or any other City interest to any other person. The rights granted under this lease are also expressly subject to any rights granted previously by the City to any person.

C. Assignment and Subletting. The District shall not assign the lease rights granted by this agreement nor sublease, pledge or mortgage its interest in the Leased Conduit or any part thereof without the express, written consent of the City Council. The District shall do no act that would in any way encumber the City’s title to the Leased Conduit or the Lease Area nor permit them to become subject to a lien of any kind.

4. Term. The term of this Agreement and the term of the lease granted herein (the “**Term**”) shall commence upon the Lee’s Summit City Council’s final approval of this Agreement (the “**Effective Date**”) and shall terminate at 11:59 p.m. on the day before the tenth anniversary of the Effective Date, unless earlier terminated by either Party in accordance with the provisions herein. The District may renew the lease granted herein for an additional ten-year term upon sixty-day's written notice to the City of its intent to renew and acceptance of the additional ten-year term by action of the City Council. Renewal shall be done in writing and signed by both Parties. The extended term shall be governed by the same terms and conditions as the initial ten year term, unless revisions are mutually agreed to by the Parties in writing.

5. Consideration. Immediately upon the execution of this Agreement, the District shall pay to the City the first annual payment calculated at \$0.83 per linear foot annually. Based on the conduit length (1155 ft.) the lease of the Leased Conduit equals \$958.65 annually. Future payments will be due on the anniversary of the Effective Date. Should the City and the District desire to enter into a separate agreement the above lease payments may be waived by City Council in consideration of benefits received in that separate agreement.

6. Permits, Design and Construction, Inspection, Fiber Installation, Maintenance; Relocation; Repairs.

A. Permits, Design and Construction Standards. The District shall comply with all City code and permit requirements for work within City right-of-way during the installation of its fiber, or when performing maintenance. Whether in the leased conduit, or in the adjacent city owned right-of-way, and prior to installing any infrastructure in the public right-of-way, the District shall obtain a permit to work in the public right-of-way that meets the requirements of City for issuance of such permits and payment of any fees imposed upon other similarly situated users by City.

B. Installation. The District shall give notice to the City within one week of its intent to install, and or perform maintenance on the fiber in the leased conduit.

C. Maintenance Repair and Location Service Responsibilities. The City shall be responsible for the operation, maintenance and repair of the City Conduit. The District shall be responsible for the operation, maintenance and repair of its fiber run in the lease conduit. The District shall be responsible for providing data to, and paying, for locates of its fiber once it exits the leased conduit. The City shall be responsible for responding to requests for “locates” of the conduit that it owns.

D. Relocation. In the event the City decides to relocate the segment of the Leased Conduit, The City will be responsible for the cost of moving the conduit, and the District will be responsible for the cost of moving its fiber within the Leased Conduit. The City agrees to provide the District with sixty days notice in writing, unless failure to relocate poses a threat to health, safety or welfare of the public or individuals, as determined by the City, in which case the City shall have the right to move the conduit and fiber without such notice or with a lesser notice, at the Districts expense, and the District shall reimburse the City within sixty days of its receipt of an invoice for the relocation.

E. Repair of Damages. The District agrees to promptly repair all damage caused by District or its contractors to the City Conduit or to any existing fiber optic cable owned by the City or others in common handholes or manholes at District’s sole cost. If such damage poses a threat to the health, safety or welfare of the public or individuals, the City may cause repairs to be made at the Districts expense and the District shall reimburse the City within sixty days of its receipt of an invoice for the repairs.

8. Notice. All notices, shall be in writing and shall be delivered by certified mail return receipt requested or by overnight delivery that is capable of providing proof of delivery. Any such notice shall be deemed effective on the date of mailing. All notices shall be addressed to the Parties as specified below:

If to City: Chief Technology Officer
City of Lee’s Summit
220 SE Green St

Lee's Summit, Missouri 64063
Attention: Stephen Marsh

With a copy to: City Attorney
City Of Lee's Summit
220 SE Green St
Lee's Summit, Missouri 64063
Attention: Brian Head

If to Lee's Summit R7 School District: Executive Director of, Technology
301 NE Tudor Rd.
Lee's Summit, Missouri 64086
Attention: Dr. Amy Gates

10. Removal/Ownership of Facilities. Upon the termination or non-renewal of this Agreement, and at the City's sole discretion, the District shall either remove all facilities owned by the District within the City conduit at the Districts sole cost and expense, or abandon the facilities in place. All facilities abandoned in place, which are not otherwise owned by the City, shall become the property of the City.

11. Termination.

- A. **Material Breach.** If either Party defaults in the performance of any material term of this Agreement and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten- (10-) days prior written notice of termination to the defaulting Party at the address listed in Paragraph 9 of this Lease.
- B. **Bankruptcy or Insolvency.** Either Party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other Party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency Laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency Laws is filed against that other Party and is not dismissed within sixty (60) days after it was filed; or is merged with another political subdivision or seeks to exist through statutory or other means.

12. Confidential Information.

- A. **A. Obligations.**
 - (1) Records maintained by the City are subject to public disclosure pursuant to Chapter 610, RSMo, Missouri law as our records of District. Missouri law shall control the open or closing of such records and information contained therein. In the event a third part seeks records for a party to this lease, the other party shall be promptly notified in sufficient time to take action if deemed necessary to protect the closure of information or records including, but not limited to, items closed under other law, proprietary information and sensitive design or usage information. The Party

disclosing Confidential Information (the “**Discloser**”) shall segregate any documents including Confidential Information from other documents provided to the Party receiving Confidential Information (the “**Recipient**”) and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as Confidential Information.

- (2) Each Party shall ensure that its employees, agents, representatives, and independent contractors are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each Party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other Party. A Party shall undertake to immediately notify the other Party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.
- (3) Notwithstanding the foregoing, nothing in this Agreement shall restrict either Party with respect to information or data identical or similar to that contained in the Confidential Information of the other Party but which (1) that Party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that Party; (3) is subsequently furnished rightfully to that Party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing Party will exercise reasonable efforts to notify the other Party prior to disclosure.

13. Indemnification.

- A. Indemnification. The District, to the extent permitted by law, shall indemnify, defend and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the “City Indemnitees”) from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature, suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by the District or its representatives in the performance of the District’s obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of the District contained in this Agreement.
- B. No Waiver. Nothing herein is intended, nor shall be construed, as a waiver of sovereign or any other immunity or defense available to the parties of any of their respective officers, employees or agents.

14. Insurance Requirements.

- A. Limits. District agrees to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages: (1) Workers’ Compensation and Employers’ Liability: (a) Any State in Which Services Performed: Statutory (b) Employer’s

Liability: \$100,000 Each Accident \$500,000 Disease-Policy Limit \$100,000 Disease-Each Employee (2) Commercial General Liability: (i) Bodily injury & Property Damage General Aggregate Limit: \$2,000,000 (ii) Products/Completed Operations Aggregate Limit: \$2,000,000 (iii) Personal & Advertising Injury Limit: \$2,000,000 (iv) Each Occurrence Limit: \$2,000,000 The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001. The policy shall include Additional Insured-Owners, Lessees or Contractors Endorsement for completed operations, ISCO CG 2037 form or equivalent. This coverage shall remain in place for one (1) year after the project is complete. (3) Commercial Automobile Liability Limits (i) Bodily Injury & Property Damage Combined Single Limits: \$1,000,000 (ii) Uninsured/Underinsured Motorist: \$ 100,000 Policies shall cover owned, non-owned, & hired autos.

- B. Coverage. Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the City or its insurers. All policies of insurance under this Agreement shall be provided by a reputable insurance company or companies qualified to conduct business in Missouri. The City reserves the right, but shall not have the duty, to reject any insurer which it finds to be unsatisfactory and insist that District substitute another insurer that is reasonably satisfactory to the City. Property and Liability Insurance Companies shall be licensed to do business in Missouri and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Agreement and for the additional periods set forth herein and shall protect District, its agents, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of District, its agents, employees, and representatives in the performance of the Services covered herein.
- C. Additional Insureds. All insurance policies (except Workers Compensation and Professional Liability) shall include the City and its elected officials and employees as additional insureds as their interests may appear. The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.
- D. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the City. If any insurance company refuses to provide the required notices, District or its insurance broker shall notify the City of any cancellation, suspension, or non-renewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.
- E. Certificates. Certificates showing that the District is carrying the above-described insurance, and the status of the additional insureds, shall be furnished to the City prior to the execution of this Agreement by the City. District, or District's insurance broker, shall notify the City

of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. The District shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

15. Representations and Warranties. Each Party represents and warrants that:

- A. It has full right and authority, including any requisite corporate authority, to perform its respective obligations under this Agreement;
- B. The execution of this Agreement does not violate its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject;
- C. No litigation or governmental proceeding is pending or threatened in writing which might have a material adverse effect on this Agreement, the transaction contemplated by this Agreement or the rights of the Parties hereunder.

16. Miscellaneous Provisions.

- A. Scope of Agreement. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.
- B. Force Majeure. Neither Party shall be in default by reason of any failure or delay in performance of this Agreement of its terms and conditions, or one or more of its obligations hereunder, and such excused Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay if such failure arises out of causes beyond the control of the non-performing Party including, but not restricted to, acts of God or nature, including an earthquake, flood or tornado; acts of governmental authority, government codes, ordinances, actions, laws, rules, regulations or restrictions; insurrections, war or civil disorder; fires, floods, accidents; epidemics, quarantines; restrictions; strikes or other labor disputes (other than such excused Party's employees); lack of or delay in transportation, freight embargoes, inability to secure raw materials or transportation facilities; acts of omissions of other entities or any and all other causes beyond such Party's reasonable control. Such Party shall notify the other Party in writing of the existence of the event relied on and the cessation or termination of said event of Force Majeure and such Party shall exercise commercially reasonable efforts to minimize the time of any such delay. If an event of Force Majeure continues for more than ninety (90) days, and if the non-affected Party cannot (i) resolve the matter within such time period or (ii) provide the affected Party with an alternative solution to such matter within the same time period, such alternative solution to be substantially similar in effect to the matter affected by the Force Majeure, the affected Party has the right to terminate this Agreement.
- C. Amendment. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties. Neither Party shall assign any of its rights hereunder without the prior written consent of the other Party.

- D. Assignment. This Agreement may not be assigned by the Districts without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.
- E. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.
- F. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
- G. Applicable Law; Venue. the District shall comply with all applicable Laws. This Agreement shall be construed in accordance with the Laws of the State of Missouri. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Jackson County, Missouri and each Party consents to jurisdiction and venue before such courts.
- H. J. Limitation on Liability. As stated *infra*, It is specifically understood and agreed that nothing in this Lease shall be construed as an express or implied waiver by the City of its governmental immunity or of the implied acceptance by the City of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Missouri law, statutory and case law, or as the assumption by the City of a debt, contract or liability of Lessee in violation of Article III, VI, Sections 23 and 25 of the Constitution of Missouri.
- I. K. Survival. Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement, including the removal of equipment obligations set forth in Section 8 hereof, shall survive and be enforceable after the expiration or termination of this Agreement.
- J. L. Entire Agreement. This Agreement, including any Exhibits, contains the entire agreement between the Parties and supersedes all prior and contemporaneous communications, understandings and agreements with respect to the subject matter hereof, whether written or oral, expressed or implied. No other agreement, statement, promise, or practice between the Parties relating to the Agreement shall be binding upon the Parties.
- K. M. Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Facsimile signatures and scanned and emailed signatures shall be treated as originals.

[Signature page follows]

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

Lee's Summit R7 School District By: _____
Title: _____
STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me, a notary public, this _____ day of _____, 2017, by _____, as _____ of Lee's Summit R7 School District,

Witness my hand and official seal.
My commission expires:

(SEAL) Notary Public

CITY OF LEE'SUMMIT
By: _____
Mayor

ATTEST:

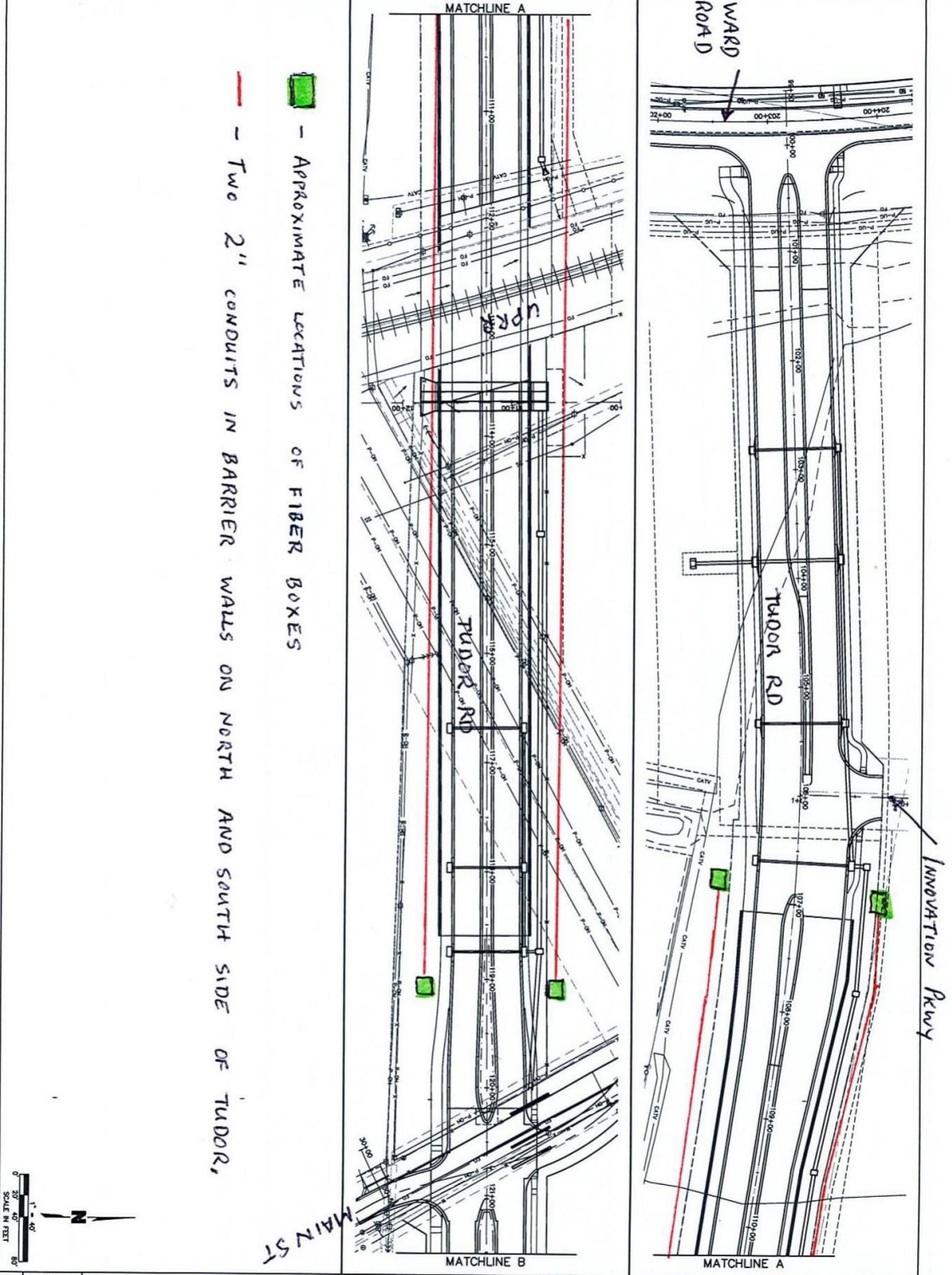
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A.

DWG: F:\PROJECTS\011-0474_TRFC\Phase 2\Street Lighting\110474_STLT_PLN.dwg USER: ccorrell
 DATE: Jan 20, 2017 11:23am XREF'S: 110474_TRFC_S_BASEMAP 110474_PAJON 110474_PBASE-PHASE2 110474_XBOU 110474_XBASE 110474_22X34_TRFC_BORDER 110474_Phase 2 STRET 110474_PBASE-PHASE2_JAME 11047



STREET LIGHTING LAYOUT		REV NO	DATE	REVISIONS DESCRIPTION	BY
TUDOR ROAD IMPROVEMENTS PHASE 2					
LEE'S SUMMIT, MISSOURI		2015			
		REVISIONS			

1" = 40'
SCALE IN FEET

163 OF 210 SHEET

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FAX: 913.381.1174
www.molsson.com