



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
Gale L. Jamison, Assistant City Engineer
Bradley M. Bennett, Senior Civil Engineer
DATE: December 6, 2012
RE: MCC Network Services, LLC, Agreement for Use of Right-of-Way

INTRODUCTION

MCC Network Services, LLC of Sullivan, Illinois proposes to install fiber optic cables below ground in conduits within the rights-of-way of the City. In accordance with City policy a license agreement with the City is required for that installation and is attached for Council consideration. The proposed routing of the fiber optic cable is depicted in Exhibit A to the proposed agreement, which is also attached.

FISCAL IMPACT

The proposed installation will be at no cost to the City. As provided for in the agreement in the event that MCC Network Services, LLC becomes a retailer of telecommunications services within the City by the transmitting, supplying or furnishing of telecommunications, including without limitation Internet services, data services, local telephone services or long distance services, as contemplated under the Illinois Simplified Municipal Telecommunications Tax Act, as amended from time to time, then MCC Network Services, LLC will provide written notice thereof to the City, and will as soon as practicable thereafter commence collection of the taxes provided for under that Act, and any other taxes that they may be required by law to collect.

RECOMMENDATION

It is recommended that the City Council approve the attached ordinance entitled “**AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY BETWEEN THE CITY OF URBANA AND MCC NETWORK SERVICES, LLC.**”

ORDINANCE NO. 2012-12-114

**AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY
BETWEEN THE CITY OF URBANA AND MCC NETWORK SERVICES, LLC.**

(North Goodwin Avenue between West University Avenue and West Main Street)

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

Section 1.

An Agreement for Use of Right-of-Way between the City of Urbana, Illinois, and MCC Network Services, LLC, 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.

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

After recording return to:

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

AGREEMENT FOR USE OF RIGHT-OF-WAY

**MCC Network Services, LLC
North Goodwin Avenue between West University Avenue and West Main Street**

THIS AGREEMENT is made and entered into by and between the CITY OF URBANA, a municipal corporation of the State of Illinois ("City"), and MCC Network Services, LLC ("Company") and is effective on the last date signed by a party hereto. The City and the Company agree as follows:

1. **Right-of way.** North Goodwin Avenue between West University Avenue and West Main Street ("right-of-way") is a roadway of at least sixty feet of dedicated right-of-way, as shown in Exhibit A, attached hereto and made a part hereof.

2. **Grant of license.** The City hereby grants the Company a limited license to construct the following facility ("facility") within said right-of-way: Two 1-inch fiber optic conduits, beginning at a handhole at West University Avenue and continuing south on North Goodwin Avenue to West Main Street. One conduit will be empty. The other conduit will contain 72-count fiber optic cable. The facility is depicted in Exhibit A.

- A. The license granted under this Agreement is wholly dependent upon the Company and its successors and assigns fully and faithfully performing and complying with all the terms, conditions, and covenants contained in this Agreement. This 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 right-of-way.
- B. The license granted under this Agreement is immediately revocable at the option of the City in the event that the Company or its successors or assigns fail to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that the Company will have a period to cure any such failure as set forth herein.
- C. The license granted under this Agreement may not be transferred or assigned without the express written consent of the City, provided that such consent will not be unreasonably withheld.

- D. The license granted under this Agreement does not convey any right, title, or interest in any right-of-way but is deemed a license only to use and occupy the right-of-way for the limited purposes and term stated herein. The license will not be construed as any warranty of title.
- E. The License granted under this Agreement is non-exclusive and at all times is subordinate to the City's and the public's use of said right-of-way for purposes normally associated with a public right-of-way. Accordingly, the Company shall, at its sole cost, relocate any portion of the facility upon the written direction of the City's Director of Public Works ("Director") if necessary to accommodate repair or construction of City utilities or improvements to the right-of-way.

3. ***Compliance with governmental requirements.***

- A. ***Permit.*** The construction and installation of the facility or any change thereof including without limitation extension, reduction, or removal of the facility shall be subject to the issuance of a permit therefore by the Director. No facility shall be constructed in any streets, alleys or other public way until a permit therefore is issued by the Director. Said permit will indicate the time, manner and place of constructing the facility. The City will approve the permit if the proposed improvements are consistent with the use of the public way granted by this Agreement. The Company shall comply with all conditions of permits issued to it. The application for a permit must be accompanied by prints, plans and maps showing the proposed location 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 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. 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 will be 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.
- B. ***Ordinances.*** The Company shall comply with all ordinances of the City, including without limitation all generally-applicable provisions regarding rights-of-way, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement.

4. ***Plan submission.*** The Company shall provide as built plans to the City upon completion of construction of the facility in an electronic format compatible with the City's Geographic Information System.

5. ***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 from time to

time, the Company shall provide written notice 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.

6. **Facility maintenance and repair.** The Company will be fully responsible and will bear all costs associated with any and all maintenance or repair of the facility.

7. **Right-of-way 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 the condition in which they existed before performance of the work.

- 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 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. If 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.
- B. If such right-of-way or improvement cannot be so repaired, replaced or restored, the Company shall compensate the City for the cost of such improvements in an amount estimated by an independent architect or engineer mutually agreed upon by the parties.
- C. 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.
- D. The Company shall keep all structures constructed pursuant to 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.
- 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.

8. **Lapse and termination.** The License shall be limited solely to the construction, maintenance, and use of the facility. Upon cessation of such use, as determined by the Director, this Agreement will immediately 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 may notify the Company in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice must give the Company at least thirty (30) days to respond. If the Company demonstrates that it has not abandoned the facility, this Agreement shall remain in force and effect according to its terms. If the Company does not

demonstrate within thirty (30) days of the notice that it has not abandoned the facility, this Agreement shall be deemed lapsed and terminated. Any additional use other than that specifically named herein, without the further express written consent of the City, shall be construed as a violation of this Agreement.

9. **Facility removal.** 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 this Agreement, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph 4 impracticable under the circumstances present, the Company consents and agrees that the City or its duly authorized agent may remove the facility, or any portion thereof, and charge all costs and expenses incurred in 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.

10. **Indemnity.** The Company agrees to defend and indemnify the City from and against any claims, suits, or actions for death or injury to persons or damage to property brought against the City in connection with this Agreement, including attorney's fees and costs, 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.

11. **Term; termination.** This Agreement and the License granted to the Company hereunder shall commence as of the date of this Agreement and shall continue until December 31, 2017, 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 may terminate this Agreement for cause by giving written notice to the other party at least forty-five (45) days prior to the proposed termination. For the purposes of this section, "for cause" means the breach of any material provision of this Agreement, which remains uncured for a period of thirty (30) days after serving the written notice thereof. A notice of termination shall specify the "cause" upon which such termination is based.

12. **Binding on successors.** This Agreement is expressly binding upon the parties, their successors, and assigns.

13. **Entire agreement.** This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties, and may be changed, modified or amended only by mutual written agreement executed by them.

14. **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.

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

To the Company: MCC Network Services, LLC.
Attention: Zachary Horn
8 S. Washington St.
Sullivan, IL 61951

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

15. **Non-waiver.** The Company will not be excused from complying with any of the terms and conditions of this 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.

16. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Illinois, and the parties subject themselves to the venue and jurisdiction of Champaign County, Illinois.

17. **Recording.** This Agreement will be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the City.

18. **Execution by counterpart.** This Agreement may be executed in counterparts, each of which will for all purposes be deemed to be an original and will together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement at Champaign County, Illinois, on the dates as stated below.

City of Urbana, Illinois:

Laurel Lunt Prussing
Mayor

Date

ATTEST:

Phyllis Clark
City Clerk

MCC Network Services, LLC:

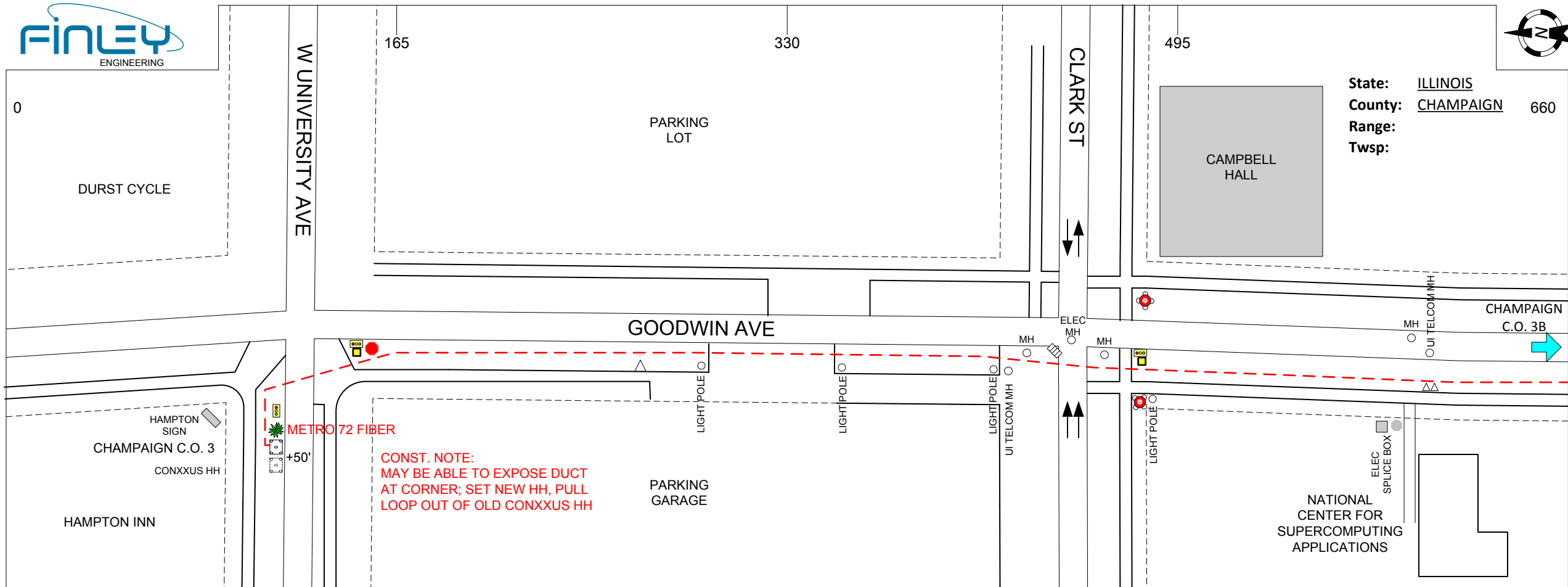
Zachary Horn
President

Date

ATTEST:

Elizabeth Bennett
Secretary

Attachment: Exhibit A



TERM#	BD	BFO	I	BFOV() (")	BHF(36x48x36)T	BM2	BM2B	BM53F	BM()DP	BM()P	BM72	HBFO()	HO	W()	W()			
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As Staked

Metro Communications Co.

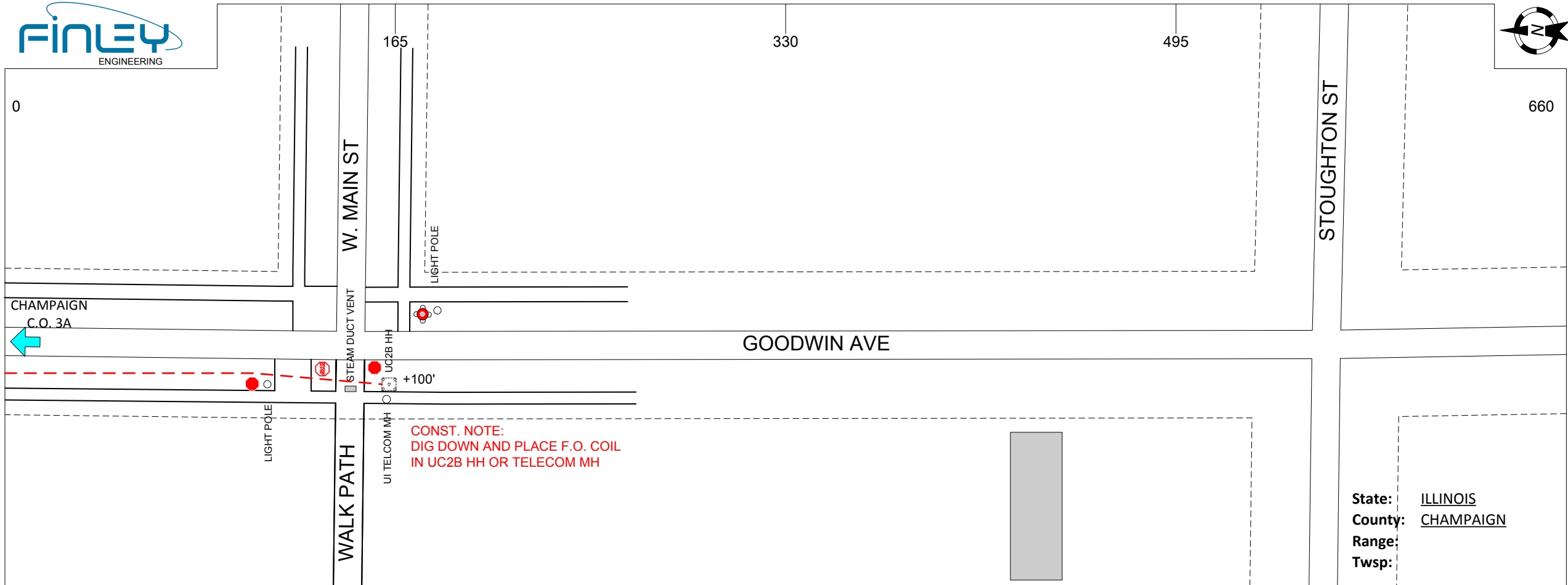
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 WO: 2011-05
 Exch: ALL
 Route: CHAMPAIGN CO
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Exhibit A

Staked By: _____ Date: _____
 Revised By: _____ Date: _____
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TOTAL		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

As Staked
Metro Communications Co.
 Name: CHAMPAIGN CO 3B
 WO: 2011-05
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