Bismarck

Engineering Department

June 8, 2016

MEMORANDUM

To: Jason Tomanek
Assistant City Administrator

From: Gabe J. Schell, PE
City Engineer

Re: **AGENDA ITEM**
Dakota Carrier Network Encroachment and Waiver Agreement
310 North Ninth Street

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, June 14, 2016, at 5:15 p.m. in the Tom Baker Room.

Dakota Carrier Network has requested permission to install and maintain privately owned fiber optic cable within the public right-of-way as shown on the attached map, per the enclosed Agreement and Waiver. We recommend approval of the attached Agreement and Waiver for the fiber optic cable's encroachment on the right-of-way.

GJS/ps
Enc.

Gabriel J. Schell, PE, City Engineer
Phone: 701-355-1505 • TDD: 711 • Fax: 701-222-6593 • 221 N. Fifth St. • PO Box 5503 • Bismarck, ND 58506-5503
Email: bisengd@bismarcknd.gov • www.bismarcknd.gov

4585 Coleman Street
PO Box 1157
Bismarck, ND 58502-1157
701 355 8400
kljeng.com

RECEIVED
MAY ~~29~~ 30 2016
By

KLJ

May 27, 2016

Tom Kary
City of Bismarck, Engineering Department
221 North 5th Street
Bismarck, ND 58506-5503

Re: 1816166 - Dakota Carrier Network
Right-of-Way Request Bone and Joint 310 N 9th ST

Dear Mr. Kary:

Enclosed, find an executed Agreement and Waiver application and route exhibit for the proposed construction of fiber optic facility being requested by Dakota Carrier Network (DCN).

The proposed project is scheduled to begin June 27, 2016, with a completion scheduled for June 30, 2016.

Thank you, for considering DCN's application for right-of-way use. If you have any questions or comments regarding this matter, please feel free to contact me at your convenience at 701-355-8422.

Respectfully,

KLJ

Eric Wald
Project Manager

Enc. (1 each) Exhibit A
(1) Agreement and Waiver Application

AGREEMENT AND WAIVER

The City of Bismarck hereby grants _DCN, LLC_ (Grantee) the right to install and maintain a cable under the public right-of-way as shown on the attached Exhibit A, subject to the following conditions:

1. The Grantee shall comply with all rules regarding non-franchised utility installations in the public right-of-way as set by the City Engineer.

2. The term of this grant shall be for fifteen (15) years and shall continue thereafter from year to year. The City may cancel this grant at any time after the initial 15-year term upon six month's written notice to the Grantee.

3. Upon the end of the term or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove the cable and restore the public right-of-way to its original condition, if so required by the City.

4. In exchange for the City's permission to run a cable under City right-of-way or under a City street, Grantee agrees to release the City, its assigns or other franchised utilities from and waive any and all claims relating to said cable including but not limited to damages arising from damage resulting from damage to the cable by the City, its assigns or other franchised utilities. Grantee agrees that it is using the public right-of-way at its own risk and understands that the City, its assigns, or other franchised utilities have no reliable method of indexing or locating the cable. Grantee shall file complete facility location information with the City. Grantee shall not look to the City, its assigns, or other franchised utilities to pay for expense or damage to the cable by the City, its assigns, or other franchised utilities. Grantee agrees that it will hold harmless and indemnify the City, its assigns, or other franchised utilities from any and all claims in any way resulting from the placement of the cable under the public right-of-way. Grantee agrees to place facilities no deeper than 48", if depths greater than 48" are necessary, the actual depths will be identified on the as built drawings when the Grantee files complete facility location information with the City. Grantee agrees that after its installation, it will restore the City right-of-way or street to its original condition. In the event it shall become necessary for the City to perform street maintenance or construction at the location of the cable, Grantee shall temporarily relocate the cable at its sole expense upon notice from the City to relocate.

5. As a condition of the City's permission for the Grantee to locate its cable in the public right-of-way, Grantee agrees that it will not provide any services to local customers without first obtaining a franchise. If the Grantee should at any time obtain a franchise to provide services locally, it shall then be treated like other franchised utilities and be released from any obligation imposed by this agreement to indemnify or hold harmless other franchised utilities with respect to its cable installations.

DATED this 27TH day of MAY, 2016

DCN, LLC

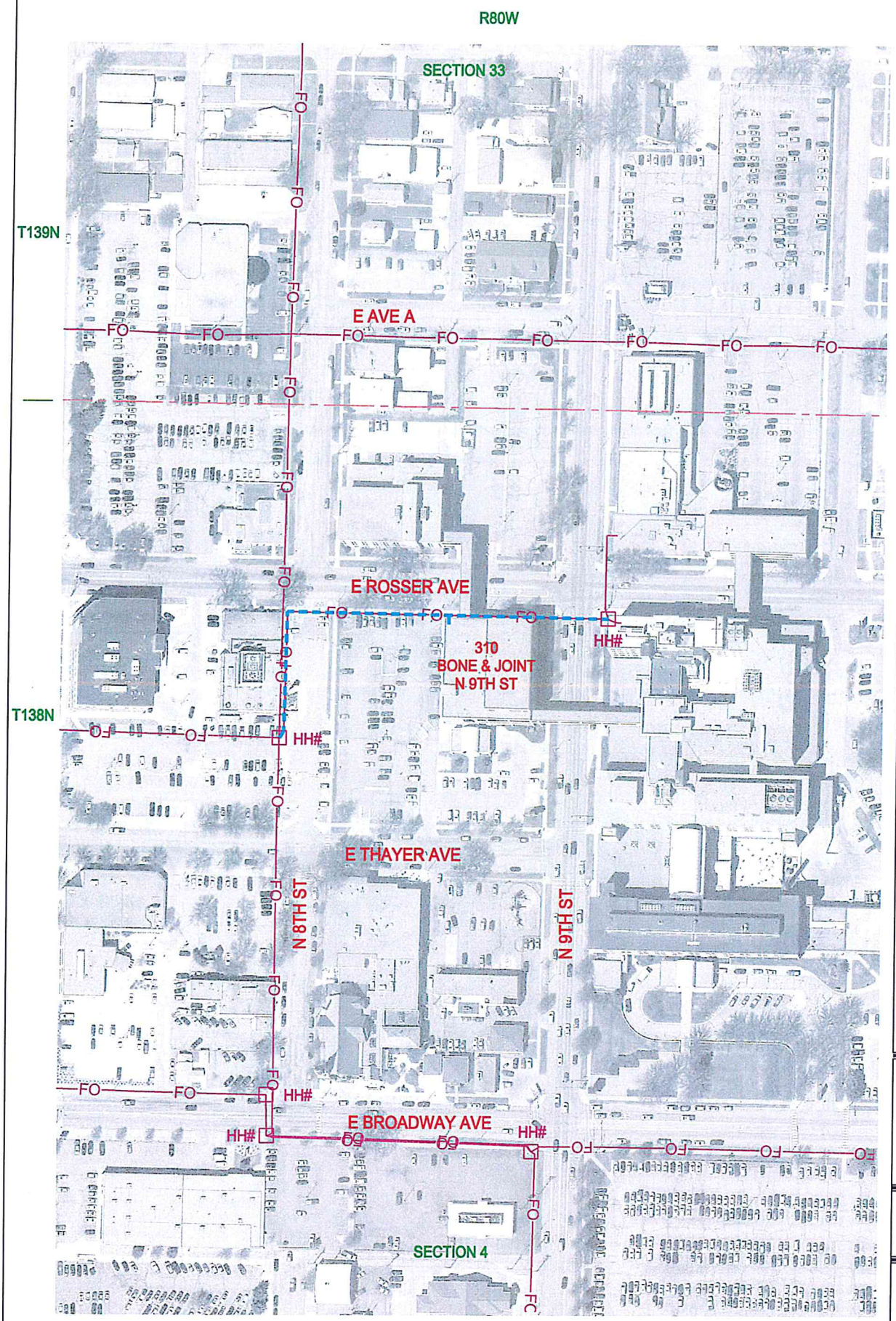
By: _____
Signature

3901 Great Plains Drive South
Fargo, ND 58104
Address

DATED this _____ day of _____, 2016

CITY OF BISMARCK

By: _____
Mike Seminary
Mayor



NEW HANDHOLE ■ HH#

EXISTING HANDHOLE □ HH#

NEW CONSTRUCTION CORRIDOR

IN EXISTING DUCT

EXISTING CONSTRUCTION CORRIDOR —FO—

DCN
Dakota Carrier
NETWORK

3901 Great Plains Drive South
Fargo, ND 58104
Office 800.814.3333
Fax 701.280.1168
www.dakotacarrier.com

Project No.	1816166
File Name	EXH_A
Drafted By	DS
Drafted Date	05/26/16
Record Drawing By	
Record Drawing Date	
Revised By	
Revision Date	
Scale	1"=200'

BISMARCK EXHIBIT "A"

KLJ

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