

BILL NO. 18-31

ORDINANCE NO. 4.438

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF GLADSTONE, MISSOURI, TO EXECUTE A RIGHT-OF-WAY AGREEMENT BY AND BETWEEN THE NORTH KANSAS CITY SCHOOL DISTRICT NO. 74 AND THE CITY OF GLADSTONE.

WHEREAS, the North Kansas City School District desires to use certain public right-of-way of the City for the purpose of construction, operation and maintenance of a fiber-optic telecommunication system pursuant to the provision of the laws of the State of Missouri; and

WHEREAS, the City Council of the City of Gladstone believes it is in the best interest and welfare of the citizens of Gladstone to enter into an agreement allowing the North Kansas City School District to use the property for such purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

THAT, the City Manager is hereby authorized to execute the Right-of-Way Agreement attached hereto as Exhibit "A" by and between the North Kansas City School District and the City of Gladstone, Missouri.

INTRODUCED, PASSED, SIGNED, AND MADE EFFECTIVE BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, ON THIS 23RD DAY OF JULY, 2018



Mayor Bill Garnos

ATTEST:



Ruth E. Bocchino, City Clerk

First Reading: July 23, 2018

Second Reading: July 23, 2018



Request for Council Action

RES ☐ # City Clerk Only

BILL ☒ # 18-31

ORD # 4.438

Date: 7/11/2018

Department: General Administration

Meeting Date Requested: 7/23/2018

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Right-of-Way Agreement with NKC School District.

Background: A high-speed fiber network is planned for the new iWerx facility, which will require fiber to be brought in from an external source. Because of iWerx's significant involvement in the Northland CAPS program, the North Kansas City School District has agreed to help provide that fiber link to the new Gladstone iWerx facility by extending their existing fiber network from the Innovation Center Campus. This fiber expansion requires the renewal of a previous but expired right-of-way agreement made in 1999 between the City of Gladstone and the North Kansas City School District. The ordinance, once passed by Council, will authorize the City Manager to renew the right-of-way agreement, allowing the school district to use certain public rights-of-way of the City for the purpose of construction, operation and maintenance of a fiber-optic telecommunication system pursuant to the provision of the laws of the State of Missouri.

Budget Discussion: Funds are budgeted in the amount of \$ 0 from the Choose a Fund Fund. Ongoing costs are estimated to be \$ 0 annually. Previous years' funding was \$0

Public/Board/Staff Input: Staff recommends the renewal of the agreement.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Bob Baer
Department Director/Administrator

PC
City Attorney

SW
City Manager

Bill No. 18-31
Ord. No. 4438

RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT, entered into as of the 7th day of July, 2018, by and between NORTH KANSAS CITY SCHOOL DISTRICT NO. 74, a public school district hereinafter referred to as "School District", and the CITY OF GLADSTONE, MISSOURI, a municipal corporation located in the County of Clay, State of Missouri, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the City is the owner of certain public right-of-way within its corporate limits; and

WHEREAS, the School District desires to use certain public right-of-way of the City for the purpose of construction, operation and maintenance of a fiber-optic telecommunication system pursuant to the provisions of the laws of the State of Missouri; and

WHEREAS, the City finds such use to be in the public interest and is willing to enter into an agreement to allow the School District to use the public right-of-way for such purposes.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the School District and the City agree as follows:

SECTION I - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings given herein:

- a) "School District": North Kansas City School District No. 74, Clay County, Missouri;
- b) "City": The City of Gladstone, Missouri;
- c) "Facilities": Telephone and telecommunication lines, conduits, ducts, wires, cables, pipes, poles, towers, vaults, pedestals and other appliances, including Fiber-Optic Cable, defined below, either under or above ground;
- d) "Fiber-Optic Cable": A bundle of thin insulated glass strands enclosed in a protective cover that use light impulses to transmit data, voice and video communications; a fiber-optic cable may include any number of individual glass strands or fibers;
- e) "Public Improvement": Any existing or contemplated public facility, building or capital improvement project, including, without limitation, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement, and public projects.

- f) "Public Project": Any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or public improvements, or any other purpose of a public nature;
- g) "Right-of-Way": Present and future streets, alleys, rights-of-way, and public easements, including right-of-way or easements dedicated in plats and right-of-way acquired through condemnation of annexation by the City.

SECTION II - GRANT

The School District is hereby granted nonexclusive permission to construct, operate and maintain its facilities in, through, and along that right-of-way depicted in Exhibit A, subject however, to the terms and conditions herein. Exhibit A shall be annually reviewed and updated by the parties to reflect additional facilities constructed by the School District or annexations and right-of-ways acquired by the City. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the right-of-way for any purpose and to any other person, including itself as it deems appropriate, subject to applicable federal and state law.

SECTION III - USE OF RIGHT-OF-WAY

In the use of right-of-way under this Agreement, the School District shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, orders, rules, and regulations adopted by governmental bodies now or hereafter having jurisdiction. In addition, the School District shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances not inconsistent with Missouri law now or hereafter adopted or promulgated by the City relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration and other requirements on the use of the right-of-way and shall comply with the following:

- a) The School District's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way. The School District shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's technical specifications and design criteria available in the City Engineer's office. Unless otherwise approved, horizontal clearance between communication lines and water, sanitary sewer and/or stormwater facilities shall not be less than three (3) feet.
- b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements, or improvements of any kind injured or removed by the School District in its activities under this Agreement shall be fully repaired or replaced promptly by the School District at its sole expense and to the reasonable satisfaction of the City or owner thereof. Cutting of streets or driveway approaches shall be repaired in accordance with the latest revision of City standard details S-8 and S-19. All disturbed areas

shall be sodded within seven (7) days of completion of specific work which causes the disturbance. School District agrees that it shall be responsible to guarantee for a period of four years the restoration of the right-of-way in the area where the School District conducted excavation and performed the restoration.

- c) All facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof shall be placed underground unless the School District can show good cause why the facilities should not be placed underground or as otherwise agreed to by the City.
- d) The School District shall keep and maintain accurate records and as-built drawings depicting horizontal and vertical location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and shall provide a copy of such as-built drawings in .dwg format.
- e) Prior to construction, reconstruction, location or relocation of any facilities in the right-of-way, the School District shall first obtain the necessary permit from the City Department of Community Development or the Department responsible for right-of-way management. All right-of-way work shall be completed in accordance with the City's technical specifications and design criteria. Permits for emergency excavations may be obtained upon completion of repairs. Nothing in this Agreement shall relieve the School District from applying for and obtaining all necessary permits for installation of facilities including excavation, building, electrical, zoning, etc. before installation of the same within the right-of-way.
- f) The School District shall cooperate promptly and fully with the City and shall take all measures necessary to provide accurate and complete information regarding the nature and locations, both horizontal and vertical, of its facilities located within the right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the School District without expense to the City, its employees, agents, or authorized contractors. The School District shall have a person familiar with the facilities who is responsible for timely, satisfying information needs of the City and other users of the right-of-way.
- g) The School District shall promptly protect, relocate, remove, or adjust its facilities in the right-of-way when such actions are requested by the City for any public improvement, public project, or for the public interest as determined by the City. Such relocation or adjustment shall be performed by the School District at its sole expense without expense to the City, its employees, agents, or authorized contractors; and shall be specifically subject to rules and regulations of the City not inconsistent with this Agreement. As soon as working drawings are available for the City project which will require the School District to relocate its facilities, the City shall provide the School District with written notice of desired relocation and the anticipated bid letting date of said project. The School District shall commence planning and relocation work within thirty (30) days of receipt of said notice and shall proceed diligently to completion in a timely manner.

- h) It shall be the sole responsibility of the School District to take adequate measures to project and defend its facilities in the right-of-way from harm or damage. If the School District fails to accurately or timely locate facilities when requested, it has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way unless such party is solely responsible for the harm or damage by its negligence or intentional conduct.
- i) The School District shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, location, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency as reasonably determined by the School District, no such closure shall take place without notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. Such signing shall be in conformance with the latest edition of the Federal Highway Administrator's Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.
- j) In the event the School District receives a certificate of public convenience from the Missouri Public Service Commission to provide local exchange service or exchange access service to customers within the corporate boundaries of the City, such services shall not commence until the School District has been granted a franchise from the City.
- k) The City agrees to manage its public right-of-way, including any requirements for relocation of facilities and compensation from telecommunications providers, in accordance with applicable federal or state law.

SECTION IV – INDEMNITY; HOLD HARMLESS; AND INSURANCE

- a) **Indemnification.** To the extent permitted by Missouri law, the School District shall hold and save the City, its boards, commissions, officers, employees, agents, and authorized contractors on public improvements harmless from and against all claims, damages, expense, liability and costs, including attorney fees, which may be occasioned by the School District in any manner, solely or in part by the School District's occupancy of right-of-way, except to the extent otherwise specified in Section III(h). In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the right-of-way by facilities of the School District, then upon notice by the City to the School District, the School District will assume liability for the defense of such actions at the cost of the School District, subject to the option of the City to appear and defend, at its own cost, any such case.
- b) **Insurance.** Except as may be prohibited by law, the School District shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company

licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the School District, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the School District, its officers, directors, employees and agents, or any subcontractors of the School District. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all the School District's operations, products, services or use of automobiles, or construction equipment under this Agreement. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,804,046.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's or School District's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk

SECTION V - CONSIDERATION

In consideration for the use of the public right-of-way within the City and other rights and privileges granted by the Agreement, the School District shall pay the City the sum of \$10.00, the receipt of which is hereby acknowledged by the City.

SECTION VI - OTHER PAYMENTS AND CHARGES

The payment herein provided shall be in addition to, not in lieu of, all other licenses, taxes, charges, assessments, fees or impositions that are or may be imposed by the City or other unit of local government. The School District shall pay all applicable fees required by the City for similar construction, maintenance, or use of the right-of-way.

SECTION VII - ATTACHMENT TO FACILITIES

Nothing in this Agreement shall be construed to require or permit any telephone, electric light, or power wire attachments by either the City or the School District on the facilities of the other. If such attachments are desired by the City or the School District, then a separate noncontingent agreement shall be prerequisite to such attachments.

SECTION VIII - FORFEITURE OF GRANT AND PRIVILEGE

In case of failure on the part of the School District, its successors and assigns to comply with any of the provisions of this Agreement or if the School District, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, the School District, its successors and assigns, shall forfeit all rights and privileges granted herein, and all rights hereunder shall cease,

terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings. Before the City proceeds to forfeit said grant, as in this section prescribed, it shall first serve a written notice upon the School District setting forth in detail in such notice the neglect or failure complained of, and the School District shall have ninety (90) days thereafter in which to comply with the conditions of this grant and privilege. If at the end of such 90-day period, the City deems that the conditions have not been complied with and that the Agreement is subject to cancellation by reason thereof, the City shall take action to repeal the Agreement; setting out the grounds upon which said grant and privilege is to be cancelled or terminated. If within thirty (30) days after the effective date of said action, the School District shall not have instituted an action, either in the Circuit Court of Clay County, Missouri or some other court of competent jurisdiction to determine whether or not the School District has violated the terms of this Agreement and that the Agreement is subject to cancellation by reasons thereof, this Agreement shall be cancelled and terminated at the end of such 30-day period. If within such 30-day period the School District does initiate an action, as above provided, to determine whether or not the School District has violated the terms of this Agreement and that the Agreement is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event; in case the court finds that the Agreement is subject to cancellation by reason of the violation of its terms, this Agreement shall terminate thirty (30) days after such final judgment is rendered. PROVIDED, however, that the failure of the School District to comply with any of the provisions of this Agreement or the doing or causing to be done by the School District of anything prohibited by, or in violation of the terms of, this Agreement shall not be a ground for the forfeiture thereof when such act or omission on the part of the School District is due to any cause or delay beyond the control of the School District, its successors and assigns, or to bona fide legal proceedings.

SECTION IX - RIGHTS AND DUTIES

Upon expiration of this Agreement, whether by lapse of time, by agreement between the School District and the City, or by forfeiture thereof, the School District shall remove from public property any and all of its facilities that are the subject of this Agreement within a reasonable time after such expiration; and it shall be the duty of the School District, immediately upon such removal, to restore the right-of-way from which the facilities are removed to as good condition as the same were before the removal was effected.

SECTION X - TERM

This Agreement shall be and remain in full force and effect for a period of ten (10) years from the effective date hereof, unless sooner terminated as herein provided. The parties hereto agree that this Agreement may be renewed at the end of the term for an additional five (5) years term subject to the renegotiation of all provisions, including conditions of use and compensation. The School District shall give notice of its interest in extension of this Agreement at least nine (9) months prior to the expiration of the term.

SECTION XI - ASSIGNMENT

The rights contained in this Agreement inure to the benefit of the School District and any parent, subsidiary, affiliate, or successor entity now or hereafter existing. The rights shall not be assignable to any other person or entity without the express written consent of the governing body of the City.

SECTION XII - UTILITY COORDINATION COMMITTEE

At its option, the School District shall become a member of and be eligible to participate in the Utility Coordination Committee established by the City's Public Works Department. The Committee, consisting of representatives of all area public and private utilities, meets regularly to share information on capital improvement plans and other matters of common interest.

SECTION XIII - NOTICES

All notices required to be given to either party under the provisions of this Agreement, shall be deemed served when delivered by hand, or 48 hours after being sent by certified United States mail, return receipt requested, in writing to the persons specified below. All notices required to be given the City shall be delivered or mailed to: City of Gladstone, 7010 N. Holmes, Gladstone, MO 64118, ATTN: City Manager. All notices required to be given to the School District shall be delivered or mailed to: North Kansas City School District No. 74, 2000 NE 46th Street, Kansas City, MO 64116, ATTN: Superintendent of Schools.

SECTION XIV - ENTIRE AGREEMENT; AMENDMENT

This Agreement represents the entire Agreement between the City and the School District; and may be amended only by written instrument, signed by both parties.

SECTION XV - SEVERABILITY

If a court of competent jurisdiction should hold any section or part of this Agreement invalid, such holdings shall not effect the remainder of the Agreement nor the context in which such section or part so held invalid may appear, except to the extent that an entire section or part may be inseparably connected in meaning or effect with that section or part.

IN WITNESS WHEREOF, the parties have hereto set their hands to this Agreement the day and year first indicated above.

CITY OF GLADSTONE, MISSOURI

By 
Scott Wingerson, City Manager

Attested by:  7/25/18
Ruth Bocchino, City Clerk



North Kansas City School District No. 74

By 
President, Board of Education

Attested by: 
Clerk, Board of Education