

**RESOLUTION NO. R-18-45**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A RIGHTS-OF-WAY USE AGREEMENT WITH OAK HILL DAY  
SCHOOL FOR THE INSTALLATION OF FIBER OPTIC CABLE.**

**WHEREAS**, Oak Hill Day School has requested use of the City's Rights-of-Way to construct, install, maintain, and operate fiber optic cable between its north and south campuses; and

**WHEREAS**, the proposed facilities will be installed in the Rights-of-Way of Northeast 70<sup>th</sup> Street and North Cherry Lane; and

**WHEREAS**, the City and Oak Hill Day School desire to enter into this agreement.

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

**THAT**, the City Manager of the City of Gladstone, Missouri, is hereby authorized to execute a Rights-of-Way Use Agreement with Oak Hill Day School.

**INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY  
OF GLADSTONE, MISSOURI THIS 25<sup>TH</sup> DAY OF JUNE, 2018.**

  
\_\_\_\_\_  
Mayor Bill Garnos

Attest:

  
\_\_\_\_\_  
Ruth Bocchino, City Clerk



# *Request for Council Action*

**RESOLUTION** # R-18-45

**BILL** # City Clerk Only    **ORDINANCE** # City Clerk Only

**Date:** 6/20/2018

**Department/Office:** Public Works

**Meeting Date Requested:** 6/25/2018

**Public Hearing:**  Yes     No    Date: Click here to enter a date.

**Subject:** Rights-of-Way Agreement between the City of Gladstone and Oak Hill Day School.

**Requested Action:** Approval of Rights-of-Way Agreement between the City of Gladstone and Oak Hill Day School.

**Background:** Oak Hill Day School has requested a Rights-of-Way use agreement in order to run Fiber Optic Cable to their south campus.

**Budget Discussion:** Funds are budgeted in the amount of \$n/a from the Choose an item. fund. Ongoing costs are estimated to be \$n/a annually. Previous years' funding was \$n/a

**Public/Board/Staff Input:** n/a

**Recommendation:** Staff recommends the approval of the rights-of-way agreement with Oak Hill Day School for the installation of Fiber Optic Cable to their recently completed south campus.

**Follow up:** n/a

**Distribute Original Contracts to:**  City Clerk

Tim Nebergall

SW

PC Reviewed

**RCA DUE TO CITY CLERK WEDNESDAY 2:00 PM**

Revised 1/10/2018

12-18-45

**RIGHTS-OF-WAY USE AGREEMENT  
FOR COMMUNICATIONS FACILITIES**

**THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES** ("Agreement") is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, OPAC HILL DAY SCHOOL (the "Licensee"), and the City of Gladstone, Missouri, a municipality of the State of Missouri (the "City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

**WHEREAS**, Licensee has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

**WHEREAS**, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined below in 1.2); and

**NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:**

**SECTION 1. GENERAL**

**1.1 Preservation of Police Power Authority.** Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

**1.2 Defined Terms.** For purposes of this Agreement, the capitalized terms shall have the meanings as set forth in the Code of Ordinances of the City, including specifically Chapter 115, and as may be amended (the "Code" or "ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"** The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Service," as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Facilities, apparatus

(Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately requested below. **Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state, and local law and shall have on file with the City such authorization to provide such services prior to commencement.**

**1.3 Agreement Subject to Provisions of ROW Code.** This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a material of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as a ROW-user, and to be subject to the enforcement by the City as provided therein and in this Agreement. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

## **SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY**

**2.1 Agreements Non-Exclusive.** This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from applying for and obtaining all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the Rights-of-Way.

**2.2 Nature of Rights Granted by this Agreement.** This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access, pole attachment agreements, or other attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

**2.3 Grant.** Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth in Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, over, under, or along the City's Rights-of-Way for the purposes of supplying Communications Service within the City, subject, however, to the terms and

conditions herein set forth within this Agreement and the ROW Code and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. The size, location and specifications of the underground Facilities and any future above-ground Facilities not authorized as provided in Exhibit A, are subject to prior City approval and consent. **Licensee shall not have the right to install wireless antennae or antennae support structures in the Rights-of-Way, nor provide services not authorized herein, without express separate written agreement and authorization of the City.** In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

**2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate.** The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by specific a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral, non-discriminatory, and reasonable manner.

**2.5 No Interference.** Licensee shall construct and maintain its Facilities to be so located, constructed, and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

**2.6 Notification, Joint Installation, and Collocation Requirements.** Except in the case of an emergency, Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such written policy or direction as may be established by the City. All new facilities or structures shall collocate on existing poles or within existing conduit, trenches or other existing facilities unless shown to be not feasible. New poles or other new above ground structures more than 36" in height shall be prohibited except where a verified

statement is provided documenting the specific circumstances upon which the City thereafter determines that good cause requiring approval in the public interest or upon which such facility is required to be permitted by superseding law. Licensee shall further make its installed Facilities available to other Licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

**2.7 Licensee Responsible for Costs.** The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way for City purposes. The Licensee shall be subject to pay the City reasonable compensation for use of the Rights-of-Way where such a fee is not contrary to applicable law and where established by the City Council.

### **SECTION 3. TERM AND COMPENSATION**

**3.1 Term.** This Agreement shall be effective for a term of ten (10) years from the Effective Date, subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

### **SECTION 4. TAXES**

**4.1 Taxes.** The Licensee agrees to pay all applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a material breach of this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise, subject to any limitations herein and of applicable state or federal law.

### **SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES**

**5.1 Transfer of Agreement.** Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or

this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

**5.2 Agreement Binding.** In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

**5.3 Sale or Lease of Facilities.** Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

## **SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE**

**6.1 Forfeiture.** In case of failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code, or if the Licensee, 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, including the provisions of the Code, or if Licensee shall lose authority to provide its Communication Service or do business within the City under applicable law, the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted 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 this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, the City shall take action by an affirmative vote of the City Council at the meeting and voting, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code or as may otherwise exist at law. All remedies described in this Section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

## **SECTION 7. GENERAL CONDITIONS**

**7.1 Compliance with Laws.** In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws,

ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

**7.2 Insurance.** In addition to the requirements of Section 6.115.1110 of the ROW Code, except as may be prohibited by law, Licensee 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 Licensee, 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 Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. 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 Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,762,789.00, 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 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. A copy of the insurance policy shall be made available to the City upon request. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City. The insurance requirements in this Section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo., has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.

**7.3 Construction Guarantee and Maintenance.** Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted. Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the Rights-of-Way, equipment within the Rights-of-Way or otherwise by Licensee's use of the Rights-of-Way.

**7.4 Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees. The City shall have the right, in its discretion,



to audit the books and records of Licensee to determine if Licensee has properly accounted to the City the amount due to the City under the Licensee's obligation to pay taxes herein.

**7.5 Relationship of the Parties.** Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

**7.6 Relocation or Removal of Facilities.**

**7.6.1** In addition to the requirements of Section 6.115.580 of the ROW Code, the City may in its exercise of the public interest request, require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages.

**7.6.2** Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, or relocate its Facilities as may be reasonably necessary for such permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least fourteen (14) days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within seven (7) days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages.

**7.7 No Cause of Action Against the City.** The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of the City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person

concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement, and agrees and acknowledges this Agreement to be a lawful and valid agreement between the City and Licensee. Nothing herein shall be deemed to waive the City's sovereign immunity.

## **SECTION 8. INDEMNIFICATION**

**8.1** Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, councils, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent (1.5%) interest per month until paid.

## **SECTION 9. NOTICE**

**9.1 Notice.** Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:



  
If Notice to City:

City of Gladstone  
Attn: City Manager  
7010 N. Holmes Street  
Gladstone, MO 64118

**9.2 Notice Receipt.** If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for Notice by giving Notice of address change to the other Party in the manner for giving Notice prescribed in Section 9.1.

## **SECTION 10. MISCELLANEOUS**

**10.1** This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

**10.2** The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

**10.3** No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed: No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

**10.4** The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

**10.5** This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

**SECTION 11. EFFECTIVE DATE AND ACCEPTANCE**

11.1 This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF GLADSTONE, MISSOURI

Scott Wingerson  
Scott Wingerson, City Manager

OAK HILL DAY SCHOOL

By: Suzanne McCarles  
Name: Suzanne McCarles  
Title: Head of School

ATTEST:

Ruth Bocchino  
Ruth Bocchino, City Clerk

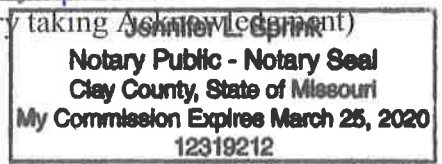
STATE OF Missouri )  
 ) ss.  
COUNTY OF Clay )

The forgoing instrument was acknowledged before me this 7<sup>th</sup> day of May, 2018 by Suzanne McCarles on behalf of the Oak Hill Day School. This person is personally known to me or has produced D.L. as identification.

Jennifer L Sprink  
(Signature of Notary taking Acknowledgment)

Notary Public, State of Missouri

My Commission Expires: March 25, 2020



## EXHIBIT A

### SPECIAL CONDITIONS

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement:

1. All new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City.
2. Licensee acknowledges and agrees that it is required to pay all applicable taxes, including the City's license tax as a ROW-user asserting its status as a provider of local telecommunications services and shall remit to the City such tax on gross receipts of all of its revenue from its services authorized herein or otherwise as required by Article 5 of Chapter 105 of the City's Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf that are identified on the right-of-way permit application or otherwise identified to the City) shall not authorize third-parties without a valid license, Right-of-way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.