

March 17, 1998

**MEMORANDUM**

✓ ✓  
To: John, Mike  
From: Jim Pierce *JP*  
Subject: Fiber Optic Cable

I happened to run across a copy of an ordinance allowing Metropolitan Fiber Systems of Dallas (MFS) to install and operate a fiber optic system in the Town. In that ordinance, MFS is required to provide the Town two fiber pairs for its own use. The Town has two other fiber optic franchises within its boundaries, Brooks Fiber and MCI Metro. If their ordinances also provide fiber optic pairs for Town use, it could possibly be very useful to the Town.

This is to suggest the other two ordinances be researched for optic pair availability and that a composite map be prepared showing the location of the fiber optic lines.

Related article attached.

## INFORMATION TECHNOLOGY

### MSDS software simplifies regulatory compliance

As laws concerning chemical storage become more stringent, it is more important than ever that local governments keep chemical-related information up to date. In fact, federal agencies such as the EPA and the Occupational Safety and Health Administration sometimes conduct audits to ensure local governments' compliance with storage and record-keeping regulations.

To assist in gathering, storing and organizing chemical-related data, some cities and counties are choosing an automated route. For example, officials in Denton, Texas, recently developed a material safety data sheet (MSDS) system to standardize chemical storage data for city utilities.

Denton created its MSDS system in the spring of 1996 using the Comply Plus software program from Dolphin Software, Lake Oswego, Ore. Accessible to all 1,000 city employees, the system encompasses the electric, water and sanitary utilities.



The city's previous system for logging chemical safety and storage data required utility managers to manually input data into a series of large binders. With multiple utility divisions, manual record-keeping resulted in inconsistent data that was difficult for employees to access.

The new system categorizes Denton's chemical data according to the utility divisions in which the chemicals exist. Employees can search the database by chemical or by location.

Only one database administrator maintains Denton's MSDS system, thereby preserving the integrity of the system. As each division receives a new data sheet, its manager sends the updated information to the administrator. The database is updated by the software provider quarterly.

With a modern, standardized and easily accessible MSDS system, Denton has simplified compliance with government MSDS regulations. Eventually, the city plans to expand the system to non-utility divisions. ☆

— Lee Hicks, utility safety and training coordinator, Denton, Texas

## GOVERNMENT TECHNOLOGY

### Fiber optics upgrade is a national priority

Fiber-optic cables increasingly are becoming a part of the infrastructure landscape. While not nearly as pervasive as good old-fashioned copper phone wire, fiber optics is making inroads. Local telephone and cable television companies are installing hundreds of miles of the cables, and even mundane things like changeable traffic advisory signs are using fiber optics to create the messages.

The larger metropolitan areas in the country have access to fiber-optics networks, as do a significant percentage of the smaller metro areas. But beyond perhaps the top 250 cities, it is hit-and-miss. Even those communities that do have fiber-optics networks might find that the networks (often installed by telephone companies) are not configured for their needs.

Estimates of the total number of fiber kilometers in place in North America run to 16 million by 2001, up from 7.4 million in 1995. With this kind of growth, access should become increasingly easy.

Cities and counties may find many practical applications for fiber optics. For example, the technology may be used to accommodate local and wide area networks, to control and monitor arterial level traffic management systems, to connect schools and libraries for information-resource sharing, or as a method of extending an in-house telephone system to remote facilities.

Officials contemplating building or leasing a fiber-optics network need to familiarize themselves with the technology. Fiber-optic cable consists of extremely thin and finely manufactured strands of glass, each about the thickness of a human hair. The glass is treated with certain materials so that it transmits light efficiently.

Optical fibers are used to transmit information and data in the form of pulses of light, typically at frequencies above the range of human vision, at very high speeds and over long distances. The fibers come in two basic types: multimode and singlemode. In multimode fiber, the light may follow many paths, or modes, down the fiber; in singlemode, the light follows one path.

A multimode fiber can transmit a limited amount of information over a limited distance before it needs an amplifier. This "bandwidth-distance limitation" means that the farther a multimode fiber goes, the less information it can transmit.

In general, multimode fiber is best suited for short-haul applications such as the internal wiring in a building for a local area network or a short connection between a video camera and a monitor. At best, multimode fiber is not run more than six miles with data volumes of more than 100 megabits per second.

Singlemode fiber, by contrast, generally is used for long-haul, high-data volume communication. A typical singlemode fiber link will extend up to 60 miles and can be used to handle data rates up to 20 billion bits per second. Singlemode often is used in applications such as long distance telephone lines or to transmit video signals for the cable television industry.

For many people, the choice between singlemode and multimode fiber comes down to the equipment and splicing costs. In addition to having the greatest capacity, singlemode fiber actually is cheaper to make than multimode. Ultimately, however, singlemode can be more expensive because it costs more to splice and because the equipment used to transmit on singlemode uses lasers instead of less costly light-emitting diodes (LEDs), which are used with multimode fiber.

In addition to being less expensive than lasers, LEDs are safer. Lasers used in singlemode fibers generally are not dangerous, but 10 percent have sufficient frequency and power to damage human eyesight.

Interference, long the bane of copper wires, is not a factor with fiber optics. Transmitting data by light rather than electricity virtually frees the lines from the interference caused by lightning or electrical discharges. Digital signals also improve the system's ability to filter out noise.

Such immunity to electrical interference means that optical fiber cables could share the same space and conduit as power circuits. In fact, some power transmission lines also bundle optical fibers with the electrical cable. Fiber-optic cable also is free of sources of electrical discharge, meaning it can be installed in hazardous locations or run through gas and oil pipelines.

Fiber optics offers a number of other advantages as a means of transmitting information. The cables generally are very small, ranging from less than a quarter-inch in diameter for a two-fiber cable up to about three-quarters of an inch for a 216-fiber cable. The cables are tough and lightweight, and they can be pulled much greater distances than copper, resulting in reduced splicing costs.

In terms of its applicability, when combined with modern electronics, fiber has the capacity to act as a universal communication medium. Power transmission is about the only use for which fiber is not suited.

Conventional copper wiring requires three different kinds of cable, connectors and transmission equipment to route telephone, closed-circuit television and data from one place to another. A fiber-optics system, by contrast, can transmit all three over the same fibers simultaneously.

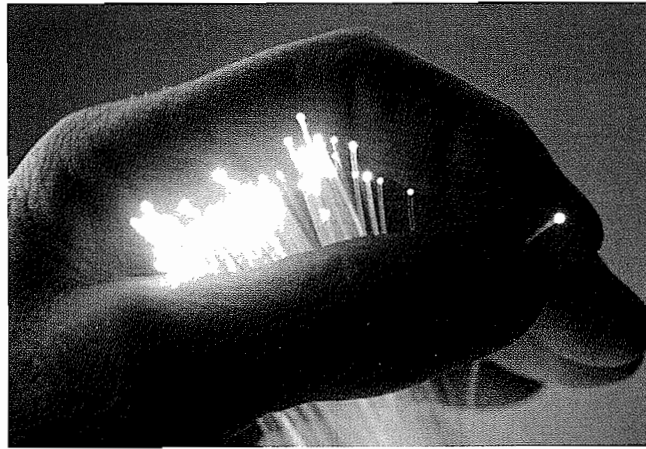
City and county officials considering using fiber optics must determine the technology's availability in their area. They must then decide whether it would be more beneficial to build a network or lease existing infrastructure. That decision ultimately comes down to economics and need.

Municipal officials need to answer several questions before pursuing a single course of action: What are the community's/government's communication needs now, and what are they likely to be in five years? How much money is available in capital and re-

ccurring funds for construction and maintenance? How much will it cost to lease a system or a portion of one rather than to build one?

Once a local government determines its needs, officials can engage residents in a discussion of the possible costs and benefits of fiber-optics access. Telephone and communication service providers, as well as the local cable television company, all ought to participate in the discourse. ☆

— Hunter Fulgham, manager of telecommunication systems, HNTB Corp., Bellevue, Wash.



## EROSION CONTROL

### Researchers study erosion control costs, benefits

Urban construction projects have intensified erosion and sedimentation in North Carolina, even though the state has one of the nation's strongest erosion control programs. To solve the problem, Gov. James Hunt has called on the state Department of Environment and Natural Resources to step up enforcement of regulations, assess regulatory inadequacies and recommend changes to the General Assembly.

The state also has enlisted the assistance of researchers at North Carolina State University in Raleigh. The researchers will assess the economic damage from sedimenta-

# Fiber In Pipe Methods Spread To Gas Lines, Rehab Liners

by Jeff Griffin • Senior Editor



Several companies have developed procedures for placing fiber-optic telecommunications cable in pipes that are part of the underground utility infrastructure.

CityNet Telecommunications and Ca-Botics Fiber Systems employ different robotic techniques to install conduit to hold fiber cable inside sanitary and storm sewer pipelines. Sempra Fiber Links has completed a test project that placed fiber cable inside active natural gas lines. Evanco Environmental Technologies has added the capability of including fiber duct in its pipe relining system.

The benefits seem obvious. Placing cable in already-buried pipelines eliminates the need for extensive excavations or to install new duct by trenchless methods. Cost savings, say cable-in-pipe proponents, can be enormous.

CityNet, based in Silver Spring, MD, has been most active in fiber-in-pipe construction in the United States. In October 2001, CityNet completed a project that links more than 1,000 business users in 21 buildings in downtown Albuquerque, NM, to an all-fiber broadband network, placing conduit and cable in 4.2 miles of the city's storm and sanitary sewer systems. Also in October, Ca-Botics, Dublin, OH, completed a 1.5 mile cable route through sewers in Dublin, connecting a high school to an already-operational broadband system. Sempra, of San Diego, CA, has constructed a two-mile test section of fiber in natural gas pipe in Wilmington, NC.

## CityNet

CityNet's Albuquerque project is believed to be the largest to date to connect broadband customers through sewer systems. In addition to connections already completed, CityNet CEO Robert Berger says that six more buildings are expected to be added to the Albuquerque hookup in coming months.

CityNet also has completed a fiber-in-sewer segment in Vienna, Austria, and is building broadband links through existing sewers in Indianapolis and Omaha, both projected to be operational during the second quarter of 2002. Agreements for similar projects have been reached with city officials in Pittsburgh, Dallas and Seville,

Spain, and negotiations are under way in other markets, says Berger.

Under terms of the agreements, CityNet owns and maintains the fiber network and shares a percentage of revenues from the system with cities for allowing cable to be placed in their pipelines.

The first step in CityNet's process is video inspection and mapping of sewer lines where cable will be deployed. Any necessary pipeline repair or rehabilitation is completed before installation of cable begins.

Cable installations are made with robotic technology. "Our system uses a carrying plant to hold our network in place," explains CityNet's Lee Allentuck. "A robot first expands stainless-steel rings on the inside of a sewer pipe, much like the ring clamps inside a car, but in reverse. These rings are positioned every meter or so and are very thin to avoid any blockage of the pipe. Once the rings are in place, three conduits are attached to small clamps located on each ring. This system leaves nothing hanging and avoids any drilling that could damage smaller pipes. Plus, as a side benefit, the carrying plant serves as a sort of endo-skeleton, offering additional support to these pipes."

Cable is inserted through the conduit and is brought out of the pipe and terminated in protected boxes or patch panels in manholes. Then cable is routed into each building and premise wiring is completed.

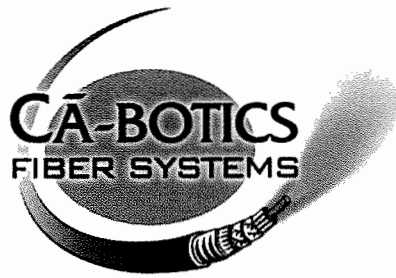
CityNet's robotics technology was developed by the Swiss company Ka-Te System, AG. CityNet owns the worldwide rights to the robotics system.

Carter & Burgess Inc., Fort Worth, TX, assists in planning CityNet projects and is the general contractor for construction.

### Ca-Botics

The Ca-Botics Fiber Systems installation method also uses robotics, but the procedure is different than CityNet's.

After the host pipe is cleaned and inspected and necessary improvements are made, specially designed and chemically protected armored cable is drawn through the pipe, says Ca-Botics spokesperson Veree Parker. The next step is to introduce a six-foot-long robot, equipped with five television cameras to monitor operations, into the pipe. The robot grabs the cable, lifts it up, pre-drills holes into the wall of the pipe, and anchors the cable into the pipe. Hole depths do not exceed half the thickness of the pipe wall. Ca-Botics technology does not introduce additional hardware or non-bonding metal substructures into the pipes. The cable used for Ca-Botics installations has a stiffening ele-



ment and it stays flush to the top wall of the pipe.

Cable can be terminated in the building at a panel or can be taken through utility manholes directly to termination points.

Ca-Botics' robots can operate inside pipe in diameters ranging from 8 to 48 inches. Parker says that the system can install two cables in one pass at an average installation speed of three feet per minute. The 1.5-mile-long segment in Dublin was completed in 16 days by a crew of four working one shift per day. When completed, the project will connect nearby fire department and police stations to the broadband system.

Ca-Botics holds a master license to use the technology in North America, Central America and the Caribbean from the City of Berlin Waste Water Department (Germany), a subsidiary of Robotics Cabling.

Construction usually is performed by a licensed Ca-Botics' contractor and Ca-Botics' instructors and technical personnel provide necessary training, supervision and assistance as necessary.

Ownership of cable will vary by project, says Parker.

"Ca-Botics has a flexible business model that allows municipalities to own their own cable, as in Dublin, OH," she says. "Or a system may be owned by commercial enterprises and Ca-Botics' partners such as in Canada. Ca-Botics itself may own the cable and be responsible for it and lease the capacity to customers."

### Sempre Cable in Gas Pipe

Sempre Fiber Links has completed a one-mile demonstration segment with fiber-optic cable inactive natural gas pipes owned by gas distributor Frontier Energy. Sempra and Frontier are subsidiaries of Sempra Energy. After the first segment was finished, an additional mile was added. The cable has not been connected to a broadband network.

Frontier Energy is the first natural gas company to use fiber-in-gas-pipe technology, says Jennifer Andrews, Sempra Energy media relations manager.

Andrews says that gas service does not have to be turned off to install cable duct

and that the duct-enclosed fiber does not interfere with gas service. Installation is achieved through a "hot-tap" in an isolated section of line.

"Polyethylene duct is inserted into gas pipe through gas-tight packing seals," Andrews explains. "At a predetermined exit point, duct is extracted with specialized tools. Conduit can exit pipe either above or below ground level, and conduit (with the fiber in it) is placed in a vault adjacent to the gas meter. Both ends are sealed with gas company approved and certified fittings. Procedures that Sempra uses for entering and tapping gas pipelines are well-proven and have been used for many years by the gas utilities."

Fittings, seals and installation processes comply with all gas pipeline safety requirements of the Department of Transportation's Office of Pipeline Safety, the California Public Utility Commission Safety Branch, and applicable federal regulations, says Andrews.

Sempre is marketing the patent-pending process to providers of natural gas services. The fiber would be owned by the telecom company for whom a network is built. Construction would be done by trained, Department of Transportation-approved personnel, says Andrews.

### Duct in Pipe Liner

Evanco Environmental Technologies Inc., Bracebridge, Ontario, now can integrate cable duct in its sewer pipe lining system. The Trolining system consists of high-strength grout between thin HDPE sheets which form a rigid grout "sandwich" to rehabilitate the host pipe.

Pipe and cable duct to diameters of just under one inch (20 mm) in diameter can be imbedded in the lining without reducing the cross section of the lined pipe, says President Randy Cooper, P.E.

"Embedded ducts permit retrofit installation of fiber optic or other cable, providing ideal protection against physical damage from cleaning with high-pressure water or robotics," says Cooper. "Embedment in the grout provides the additional benefit of protecting cables from groundwater which may seep through the old sewer wall."

Tests have been conducted in Germany, Cooper says, but no commercial project using the system has been initiated.

Sheets used in the Trolining system are manufactured in Austria; grout is made in Germany by MC Beauchemie, Frankfurt. Evanco is the North American distributor for the product.

### Cable-in-Pipe Technology's Future?

Cable-in-pipe procedures give telecommunications service providers yet another



trenchless construction option, but how extensively the technology will be used is not yet clear. Claims that cable-in-pipe technology removes "last-mile" barriers preventing broadband access to consumers not yet connected to fiber-optic networks have not yet been proven in the marketplace.

Completed projects placing cable in sanitary and storm sewer pipes indicate a promising future for robotic construction methods; customers, network operators and agencies owning the sewer systems say they are pleased with the results. No commercial project to place cable in natural gas pipe has been initiated.

Economics appears to be the primary factor that will influence whether pipe-in-cable construction is feasible; there must be enough paying customers to justify the expense of a fiber-in-pipe installation.

"Typically, our network will connect to multi-tenant buildings of 75,000 square feet and up," says CityNet's Allentuck. "There are a few exceptions to this formula. For instance, if a customer wants to connect to a specific building, we will work it into our design. The reason for these parameters is that these are the buildings with the most demand from our telecom carrier customers."

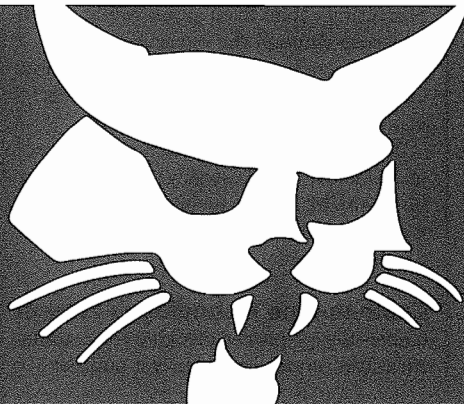
The procedure is most suited to highly built-up business areas, says Buddy Barnes of Carter & Burgess.

"Good and careful project preparation and man-

# Tough X8



o, ND 58078



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agement are important to make fiber in sewer installations feasible," says Ca-Botics' Parker. "Initial assessment, especially cleaning and televising, and comprehensive investigation in the design/routing process have to be done in order to find the most optimum routes and pipes for sewer owners and cable system owners. Also, good coordination between the sewer and cable owners and all contractors involved needs to be paramount."

Andrews says that Sempra cable in gas pipe technology will work in 80 to 90 percent of commercial buildings. "Our conduit is designed to work in gas lines that are as small as one inch in size, and most buildings fit this criteria."

As with all new technologies, questions about the practicality of cable-in-pipe procedures remain. It is well documented that much of the nation's sanitary and storm sewer infrastructure is failing and must be rehabilitated or replaced, so not all sewer networks are suitable for cable-in-pipe installations. Even those found appropriate to be cable carriers must be inspected, mapped, cleaned and sometimes repaired before cable is installed. Will these costs off-

set other savings? Could conduit installed by other methods be brought to the same structures at comparable or less cost?

Future repairs to pipe and cable also must be considered. Fiber-in-pipe companies say these should not be considered a deterrent to considering their technologies. Andrews says that the company's fiber-in-gas installation is designed so that it does not prevent the utility from carrying out any emergency gas control operations.

"When a sewer needs to be repaired, we work with local sewer engineers to make sure that our network isn't in the way or damaged," says Allentuck. "The beauty of the Ka-Te system is that we can remove and re-install our network as needed. Keep in mind, we are regularly cleaning and inspecting these pipes and chances are that we will know about a problem well before anyone else. For cable repairs, our system allows us to remove and replace the carrying plant and fiber cable with ease."

Ca-Botics technology does not bring any additional hardware and non-bonding metal substructures into the pipes that might obstruct and impede flow character-

istics or jeopardize the maintenance and any future rehabilitation of the pipe, says Parker. If necessary, cable is easy to remove, even abandon, thus leaving no obstacles behind that might be very expensive to remove.

The potential of deriving income by allowing sewer systems to be carriers of telecommunications cable appeals to many cash-strapped cities, says Evanco's Cooper.

"Present technologies and strategies for placing fiber cable in sewers boast great promises, but their track records are very limited," he continues. "If urban sewer systems are to be flawlessly fiber wired, it is important to be sure that the original purpose and current suitability of sewers are not eclipsed, but rather enhanced."

"Cities need patience and direct involvement in the process of selecting host sewers for fiber networks, and the involvement of city wastewater professionals is absolutely necessary to insure these cable rights-of-way do not interfere with design and operational objectives of the sewers."

**Reader service card number:**  
**Fiber-in-pipes technologies .....107**



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# Top Industry Sewer/Water Workshop Comes To Ft. Lauderdale



**A** revised and expanded program will be featured in the 2002 edition of the UCT Seminar Series' Municipal Sewer & Water Trenchless Workshops. The first of three workshops will be held April 17-18 at the Sheraton Ft. Lauderdale Airport Hotel in Ft. Lauderdale, FL. This two-day event promises to provide vital - and practical - information for sewer and water professionals. Other workshops scheduled for this year include: June 6-7, in Pittsburgh, PA; and Sept. 17-18, in Denver, CO.

Now entering its fourth year of bringing the highest quality, most beneficial information available, the UCT Seminar Series is sponsored by *Underground Construction* and *Rehabilitation Technology* magazines, UCT, NASSCO and the PRC.

More cutting edge topics have been added to the program along with additional live demonstrations. These workshops are designed for the serious municipal employee, engineer or contractor who needs objective, detailed information on specific technologies and methods available in the trenchless field today. However, there is plenty of time for networking with peers and enjoying various activities.

The American public continues to become more aware of the health and safety

issues facing their decaying underground infrastructure - not to mention the potential for EPA fines - as well as striving to keep pace with the rapid expansion that many areas of the country have experienced over the past 10 years. As budget considerations are often paramount to municipal projects, attention will also be given to the cost benefits of trenchless techniques. This workshop will use a combination of presentations and panel discussions, utilizing top industry experts, to address the many applications, benefits, restrictions and impacts of modern trenchless construction and rehabilitation.

Additional information regarding many of the techniques and methods discussed will be available in the exhibit area. Hear leading manufacturers of rehab and construction systems, services and equipment explain how the capabilities and technical advancements of their products are assisting municipalities, engineers and contractors in handling challenges and seizing opportunities. Attendees will also have the opportunity to observe live field demonstrations where they can examine many of the technologies up-close.

A first for the UCT Seminars Series this year will be the availability of CEUs (continuing education units). These credits are earned based on the numbers of hours of education program completed.

The workshop, including two full days of expert presentations, live demos, CEU credits and a complimentary continental breakfast each day, is priced at just \$325 per person. Additional registrations from the same company or organization cost only \$245 each. There is no additional charge for the exhibits or field demonstrations.

For hotel reservations, call (954) 920-3500. Please refer to the Municipal Sewer & Water Trenchless Workshop to receive our special rate of \$125 for single or double. Reservations must be made prior to March 25.

For more information on either attending or exhibiting at the UCT Seminar Series, contact Shannon Langford at: (281) 558-6930, ext. 217; fax (281) 558-7029; e-mail slangford@uctonline.com; or check the website at [www.uctonline.com](http://www.uctonline.com).

## Tentative Program

### April 17

- Welcome/Introductions
- Program Begins - NASSCO & PRC Updates
- Comparing Trenchless With Conventional: When To Do What

### Rehabilitation

- Standardizing Remote Inspection & Data Collection/Interpretation
- Proper Maintenance And Control Of Root Infiltration
- Lateral Lining Issues & Solutions
- Effective Methods Of Manhole Rehabilitation
- Fold & Form Pipe: Proper Application & Inspection
- Pipebursting For Sewers & Water Mains: Practical Applications
- Effective Rehab Solutions With Grout
- Internal Joint Seals For Repair Of Water, Sewer & Storm Mains

### April 18

- Tying Lines & Laterals Together With Modern Plastic Fittings, Saddles
- Rehabilitation of Large Diameter Pipes
- CIPP: Installation & Inspection

### New Construction

- Application Of Directional Drilling For Sewer & Water
- Microtunneling Solutions
- Pipe Ramming & Pipe Piercing As Practical Tools

### Emerging Trends

- Subsurface Utility Engineering
- Engineering & Construction Advantages Of Water Rehab Using Prechlorinated Pipe And Pipe Bursting
- Fiber-Optic Cable In Sewers: Advantages, Limitations & Implications



Metropolitan Fiber Systems of Dallas, Inc.

ACCEPTANCE OF ORDINANCE NO. 093-047

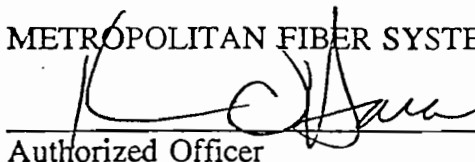
Metropolitan Fiber Systems of Dallas, Inc., by and through its duly authorized officer, accepts all terms and conditions of the Street Use and Rental Agreement set forth in the Town of Addison Ordinance 093-047 passed and adopted by the City Council of the Town of Addison on August 24, 1993. The caption of said Ordinance being:

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO METROPOLITAN FIBER SYSTEMS OF DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFIRM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

And files this acceptance as required by the terms of the Ordinance.

IN TESTIMONY WHEREOF, witness the corporate signature of Metropolitan Fiber Systems of Dallas, Inc. by its duly authorized officer, this the 14 day of September, 1993.

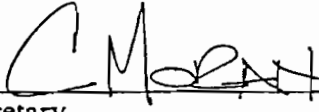
METROPOLITAN FIBER SYSTEMS OF DALLAS, INC.



Authorized Officer

Original acceptance of agreement in Ordinance No. 093-047 of which the foregoing is a true copy was filed in my office on the 20<sup>th</sup> day of SEPTEMBER, 1993, at 3:00 o'clock, 4.m.

(SEAL)

  
\_\_\_\_\_  
City Secretary

RECEIVED

SEP - 7 1993

ORDINANCE NO. 093-046

TOWN OF ADDISON  
FINANCE ADMIN.

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO METROPOLITAN FIBER SYSTEMS OF DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. DEFINITIONS

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.

- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean Metropolitan Fiber Systems of Dallas, Inc., a Delaware corporation, its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or re-sale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts).
- K. "Director of Engineering" shall mean the Director of the City's Engineering Department or his designate.
- L. "Minimum Annual Fee" shall be based on the projected Gross Revenue for the first year's operation. Minimum Annual Fee for subsequent years is based on the highest amount paid for any previous year.

- M. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

## SECTION 2. GRANT OF CERTAIN RIGHTS

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to Metropolitan Fiber Systems of Dallas, Inc., a corporation, hereinafter called "Grantee", for an initial term of seven (7) years from passage of this streets use and rental agreement (hereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison shall not allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and interexchange carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

## SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION

(a) The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the proper City officials.

(b) Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same,

at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

(c) Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

(d) Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

(e) Grantee shall complete construction and full activation of one hundred percent (100%) of its Network within 24 months after passage of this franchise ordinance. Further, Grantee shall be capable of providing service to end use customers no later than twelve (12) months after passage of this agreement ordinance.

#### **SECTION 4. TERM OF AGREEMENT**

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

#### **SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY**

(a) All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all

facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

(b) All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(c) Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share conduit or duct trench space owned and maintained by any other person or entity, or to permit the wires or equipment of any other person or entity authorized by the City to be attached to the facilities owned and maintained by the Grantee, upon reasonable, non-discriminatory terms and at fair market value. Grantee may require any such person or entity to furnish evidence of adequate insurance covering Grantee and adequate bonds covering the performance of the person or entity attaching to Grantee's facilities as a condition precedent to granting permission to any such person or entity to attach wires or equipment to Grantee's facilities; provided Grantee's requirements for such insurance shall be reasonable.

(d) Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to attach its Network to the facilities of any other person or entity franchised by the City or to permit the facilities of any other person or entity to be attached to Grantee's facilities, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice. Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

## SECTION 6. BONDS

(a) Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in

the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Grantee to satisfactorily construct, complete and fully activate one hundred percent (100%) of Network miles within 24 months after passage of this ordinance.

(b) Any extension to the prescribed time limit of one hundred percent (100%) of Network miles within 24 hours shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines that such extension is necessary and appropriate due to causes beyond the control of Grantee.

(c) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

(d) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## SECTION 7. INSURANCE

(a) Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of franchise, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.



(b) Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
2. Commercial General (public) Liability - to include coverage for the following where the exposure exists:	
(i) Premises operations	Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
(ii) Independent contractors	
(iii) Products/completed	
(iv) Personal injury	
(v) Contractual liability	
(vi) Explosion, collapse and underground property damage	
3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:	
(i) Owned/leased automobiles	Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent
(ii) Non-owned automobiles	
(ii) Hired automobiles	

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City,

Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

(d) Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

(i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;

(ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;

(iii) Provide for notice to the Director of Finance by certified mail; and

(iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(e) The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

(h) Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

**SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT .**

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance to the City manual for Utility Location and Coordination.

(b) In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

(c) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City, without claim for reimbursement or damages against the City.

(d) In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Director of Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction, the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

(e) During the term of this agreement, Grantee shall be liable for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## SECTION 9. COMPLIANCE WITH CITY CHARTER

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter.

Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

#### SECTION 10. SERVICE TO THE CITY

Grantee, at its sole cost and expense, shall be required to provide to City for its own use, but not for resale, two (2) fiber pairs ("fiber facility") as determined by City throughout the portion of the Network used for transmission purposes (the "Backbone"), including lateral lines in public rights-of-way connecting the end user's location to that portion of the Network. In case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

#### SECTION 11. COMPENSATION TO THE CITY

(a) Acceptance Fee - The Grantee agrees to pay a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at acceptance of the agreement pursuant to Section 27.

(b) General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee for the first year of operation shall be \$5,000. The Minimum Annual Fee for subsequent years shall be equal to the highest amount paid to the City as General Compensation for any previous year.

(c) Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

(i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or

(ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(d) Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service
- (viii) all revenues from authorized rental of conduit space,
- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,
- (x) all other revenues collected by Grantee from business pursued within the City, and

(xi) recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be audited by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## SECTION 12. WAIVER

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived, provided, however, the City Council retains the right to terminate this agreement ordinance, whenever in its judgment Grantee's use of the public streets, alleys, and rights-of-way is inconsistent with the public use or whenever the Grantee's use is likely to become a nuisance.

## SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS

(a) Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

(b) Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principals, subject to approval by the City. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47CFR Part 32 or its successor and as may be further described herein. The City may require the

keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City.

In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 11, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

(c) Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(d) Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

(e) The City may, at any time, make inquiries pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

(f) Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

#### SECTION 14. RULES AND REGULATIONS

(a) The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

(b) In order to ascertain any and all facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, (iii) compel the attendance of witnesses and the production of books and records, and (iv) prescribe penalties for the failure or refusal of Grantee to testify or to produce books and records from time to time as required.

#### SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT

(a) Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, corporation affiliate or entity, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate once during the term of this agreement with prior notice and consent of City. In the event that the purchaser is the holder of a like agreement held by the purchaser upon such terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

(b) Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services for the purpose of serving the reseller's own customers, except for the purpose of directly serving Grantee's end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services); provided, however, access services from interexchange or long distance carriers is not required.

#### SECTION 16. INDEMNITY

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any injuries or damages received or sustained by any person, firm or corporation



or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the Grantor, the intent of this provision being to bring this indemnity provision within the express negligence doctrine; and Grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City related to any such claim - City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment or liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

#### SECTION 17. PRINCIPAL OFFICE LOCATION

Location of the Grantee's principal office shall be within the Dallas Metro area. Grantee shall always keep and maintain specific books, records, contracts, accounts, documents, and papers for its operations within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

#### SECTION 18. NOTICES

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P. O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the City a local telephone number operational during normal business hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

#### SECTION 19. CONFIDENTIALITY

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

## SECTION 20. VIOLATIONS

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within five (5) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

## SECTION 21. FORFEITURE AND TERMINATION

(a) In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's end-user customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its end-user customers within twelve (12) months from the date of this agreement, unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

(viii) Grantee's failure to respond or comply with City requested reports, audits, statements and other information;

(ix) Grantee's failure to operate its Network for six (6) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

## SECTION 22. POLICE POWERS

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## SECTION 23. CITY MANAGER

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and

enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.

#### SECTION 24. GOVERNING LAW

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the State of Texas and the Charter and ordinances of the Town of Addison.

#### SECTION 25. FORCE MAJEURE

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force Majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

#### SECTION 26. SEVERABILITY

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

#### SECTION 27. ACCEPTANCE OF AGREEMENT

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

#### SECTION 28. EFFECTIVE DATE

This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,  
TEXAS, on this the 24th day of August, 1993.



MAYOR

ATTEST:



CITY SECRETARY

# MCI Metro

250 Lakeside Boulevard  
Richardson, Texas 75082  
214 918 1938

FAX: 214 918 1999

Date: June 12, 1995

To: John Baumgartner and Ken Dipple

Company: Town of Addison

Telephone: \_\_\_\_\_

Fax: 931-6643 and 672-202

.....  
From: Laurie Fisher

Telephone: 918-1089

Total Pages (Including Cover Page): 21

Comments: Please call if you have any questions



2250 Lakeside Blvd.  
Richardson, TX 75082  
214 918 1938

June 12, 1995

John Baumgartner  
Town of Addison  
Public Works Department  
P.O. Box 144  
Addison, TX 75001

Dear Mr. Baumgartner,

Enclosed is the proposed Street Use Agreement between the Town of Addison and MCI metro Access Transmission Services, Inc. MCI metro has made all of the revisions pursuant to our last meeting. I hope to finalize negotiations and the document in our next meeting on June 14 at 2:00 p.m.

Sincerely,

A handwritten signature in cursive script that reads "Laurie L. Fisher".

Laurie L. Fisher

CC: Ken Dipple w/enclosure  
Jim Harlan w/o enclosure

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO MCI METRO ACCESS TRANSMISSION SERVICES, INC. ("MCIM") A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGISTRATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS**

### **SECTION 1. DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground for the initial construction phase. Initial construction phase shall mean the initial loop built within the City as part of an initial Dallas Metroplex loop.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.



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- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" or "Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean MCI Metro Access Transmission Services, Inc., its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursements.
- K. *Director of Public Works*  
"~~Director of Engineering~~" shall mean the Director of the City's *Public Works* ~~Engineering~~ Department or his designate.
- L. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

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## **SECTION 2. GRANT OF CERTAIN RIGHTS**

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to MCI Metro Access Transmission Services, Inc., a corporation, hereinafter called "Grantee", for an initial term of ten (10) years from passage of this streets use and rental agreement (hereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to telecommunications services including: audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC, state or Federal law. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison shall not allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and common carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

## **SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION**

a. The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

b. Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City

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Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

c. Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer reasonable requirements for restoration of any disturbed public property.

d. Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

e. Grantee shall complete construction and full activation of its initial Network within 24 months after passage of this franchise ordinance. Further, Grantee shall be capable of providing service to customers no later than twenty-four (24) months after completion of construction of its initial Network.

#### **SECTION 4. TERM OF AGREEMENT**

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

#### **SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY**

a. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

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b. All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

c. Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share duct trench space owned and maintained by any upon reasonable, non-discriminatory terms and at fair market value.

d. Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement, operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to share trench space of any other person or entity franchised by the City, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

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Austin  
Language

Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

**SECTION 6. BONDS**

a. Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

b. Any extension to the prescribed time limit of one hundred percent (100%) of the initial Network miles within twenty four (24) months shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines that such extension is necessary and appropriate due to causes beyond the control of Grantee.

c. The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law.

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and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

d. The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## SECTION 7. INSURANCE

a. Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poor. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of franchise, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

b. Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
2.	Commercial General (public) Liability- to include coverage for the following where the exposure exists:	
	(i) Premises operations	Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
	(ii) Independent contractors	
	(iii) Products/completed	
	(iv) Personal injury	
	(v) Contractual liability	

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- (vi) Explosion, collapse and underground property damage
3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:
- |       |                          |   |
|-------|--------------------------|---|
| (i)   | Owned/leased automobiles | Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent. |
| (ii)  | Non-owed automobiles     |   |
| (iii) | Hired automobiles        |   |
- c. The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.
- d. Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:
- (i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
- (ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
- (iii) Provide for notice to the Director of Finance by certified mail; and
- (iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.
- e. The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

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f. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

g. The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

h. Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

#### **SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT**

a. The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance to the City manual for Utility Location and Coordination.

b. In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

c. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its Network entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its Network, or to alter, relocate or change its Network to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its Network, or in any way or manner to alter, relocate or change its Network to enable any other entity or person, except for

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the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which will be caused by, or arise out of such change, alteration or relocation of Grantee's Network; provided, however, that the City shall never be liable for such reimbursement.

d. In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Director of Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

e. During the term of this agreement, Grantee shall be liable to the City for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## **SECTION 9. COMPLIANCE WITH CITY CHARTER**

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

## **SECTION 10. SERVICE TO THE CITY**

Grantee agrees to provide two (2) dark fiber pair to the City free of cost for its own internal telecommunications use pursuant to the following terms and conditions:

i) Two single mode fiber optic pair will be made available to the City free of cost within the portion of the Grantee's Network constructed within public rights-of way (excluding building entrance links);

ii) sixty days (60) prior to construction, the City shall notify Grantee of its intention to use such fiber along the designated route and the location of city designated splice points;

iii) City shall pay Grantee as direct cost of materials and labor plus fifteen percent (15%) for all building entrances, links, splices or access lines necessary to connect City facilities to Grantee's Network;



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iv) Grantee will construct City's building entrance links within one hundred and twenty days of the City's written request;

v) Grantee will provide physical network maintenance for all City fiber and splice points (points contained within Grantee's Network facilities);

vi) these fibers, and the transmission capacity provided hereunder shall not be used, either directly or indirectly, for sale, donation, trade, barter or resale to any third parties;

vii) the City will assist Grantee in obtaining any permits necessary for the purpose of connecting City facilities.

viii) *In case of emergency or disaster, Grantee shall upon request of the City, make available its facilities to City for emergency use.*

**SECTION 11. COMPENSATION TO THE CITY**

a. Acceptance Fee - The Grantee agrees to pay upon completion of construction of its initial Network a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at underground and after acceptance of the agreement pursuant to Section 27. In any event, Grantee's use of leased conduit facilities for Network purposes shall not require this per linear foot charge. Additionally, Grantee shall not be required to pay this fee again in the same duct for additional usage or new franchises by Grantee or assigns.

b. General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The minimum annual fee ~~for the first year of operation~~ shall be \$5,000.

c. Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

(i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or

(ii) 5% of Gross Revenues for such quarter.

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The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

d. Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service,
- (viii) all revenues from authorized rental of conduit space,
- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,

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(x) all other revenues collected by Grantee from business pursued within the City, and

(xi) Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues .

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12. WAIVER**

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived.

## **SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

a. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

b. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11.

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In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

c. Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

d. Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, its books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

e. The City may, at any time, make inquiries pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

f. Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance as it relates specifically to the City. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

#### **SECTION 14. RULES AND REGULATIONS**

a. The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

b. In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

#### **SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT**

*Corporate affiliate*

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a. Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, ~~except an affiliated entity~~, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate, parent or subsidiary during the term of this agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material breach in accordance with Section 21, revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

b. Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services unless such provider or seller has a similar franchise or is otherwise authorized to conduct business in Addison under state or Federal law.

**SECTION 16. INDEMNITY**

Grantee shall indemnify, defend and ~~save whole and harmless~~, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any bodily injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, ~~servants~~ employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributed solely to Grantee and others, or the Grantor, the intent of this provision being to bring this indemnity provision within the express negligence doctrine; and Grantee shall pay all judgments, with costs, counsel

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fees and expenses, which may be obtained against the City from any such claim. City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment for liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

#### **SECTION 17. PRINCIPAL OFFICE LOCATION**

Location of the Grantee's principal office shall be within the Dallas Metro area. Grantee shall always keep and maintain, so far as is practical, specific books, records, contracts, accounts, documents, and papers for its operations within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

#### **SECTION 18. NOTICES**

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P.O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the Dallas Metropolitan area a local telephone number operational during normal business hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

#### **SECTION 19. CONFIDENTIALITY**

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

#### **SECTION 20. VIOLATIONS**

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within ten (10) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds

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When such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement in the event of a substantial breach under Section 21 and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

## **SECTION 21. TERMINATION**

a. In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its customers within twenty-four (24) months from the date of completion of construction of its initial Network unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

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(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

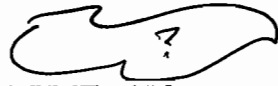
(viii) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner;

(ix) Grantee's failure to operate its Network for twenty four (24) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

**SECTION 22. POLICE POWERS**

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to and in accordance with the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.



**SECTION 23. SAVINGS CLAUSE FOR FIBER OPTICS FRANCHISE AGREEMENTS**

Notwithstanding anything contained in this ordinance to the contrary, in the event that (a) this ordinance or any part hereof, or (b) any procedure provided in this ordinance, or (c) any compensation due the City under this ordinance, becomes, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, MCIM and City shall meet and negotiate a new ordinance that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the new ordinance shall provide the City with a level of compensation comparable to that set forth in this ordinance provided that such compensation is recoverable by MCIM in a mutually agreed manner permitted by law for the unexpired portion of the term of this ordinance.

**SECTION 23. CITY MANAGER**

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.



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## **SECTION 24. GOVERNING LAW**

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the United States, the State of Texas, and the Charter and ordinances of the Town of Addison.

## **SECTION 25. FORCE MAJEURE**

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

## **SECTION 26. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

## **SECTION 27. ACCEPTANCE OF AGREEMENT**

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

## **SECTION 28. EFFECTIVE DATE**

This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

## **SECTION 29. HEADINGS**

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The enumeration and headings of the sections of this Ordinance are merely for convenience of reference, do not constitute representations or warranties, do not impose any obligation whatsoever and have no substantive significance.

**DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS on**

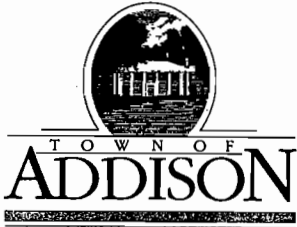
this the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

n:\harian\addison.doc



**PUBLIC WORKS DEPARTMENT**

Post Office Box 144 Addison, Texas 75001

(214) 450-2871

16801 Westgrove

**MEMORANDUM**

June 21, 1995

To: Ron Whitehead  
City Manager

From: John R. Baumgartner, P.E. *ARB*  
Director of Public Works

Re: MCImetro Street Use Rental Ordinance

Attached is a copy of a street license ordinance proposed by MCImetro to install a fiber network within the street right-of-way. This agreement is similar to those previously approved for MFS and TCG.

Staff recommends the Council approve the attached Ordinance.

*pgs 2+3 missing  
manager approval?  
not yet  
working on it now  
assuming ok  
unless she hears  
otherwise*



2250 Lakeside Blvd.  
Richardson, TX 75082  
214 918 1938

June 12, 1995

John Baumgartner  
Town of Addison  
Public Works Department  
P.O. Box 144  
Addison, TX 75001

Dear Mr. Baumgartner,

Enclosed is the proposed Street Use Agreement between the Town of Addison and MCImetro Access Transmission Services, Inc. MCImetro has made all of the revisions pursuant to our last meeting. I hope to finalize negotiations and the document in our next meeting on June 14 at 2:00 p.m.

Sincerely,

A handwritten signature in cursive script that reads "Laurie L. Fisher".

Laurie L. Fisher

CC: Ken Dipple w/enclosure  
Jim Harlan w/o enclosure

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO MCI METRO ACCESS TRANSMISSION SERVICES, INC. ("MCIM") A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGISTRATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS**

## **SECTION 1. DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground for the initial construction phase. Initial construction phase shall mean the initial loop built within the City as part of an initial Dallas Metroplex loop.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.

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- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" or "Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean MCI Metro Access Transmission Services, Inc., its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursements.
- K. "Director of Public Works" shall mean the Director of the City's Public Works Department or his designee.
- L. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

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## **SECTION 2. GRANT OF CERTAIN RIGHTS**

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to MCI Metro Access Transmission Services, Inc., a corporation, hereinafter called "Grantee", for an initial term of ten (10) years from passage of this streets use and rental agreement (hereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to telecommunications services including: audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC, state or Federal law. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison shall not allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and common carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

## **SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION**

a. The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

b. Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City

Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

c. Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer reasonable requirements for restoration of any disturbed public property.

d. Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

e. Grantee shall complete construction and full activation of its initial Network within 24 months after passage of this franchise ordinance. Further, Grantee shall be capable of providing service to customers no later than twenty-four (24) months after completion of construction of its initial Network.

#### **SECTION 4. TERM OF AGREEMENT**

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

#### **SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY**

a. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.



b. All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

c. Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share duct trench space owned and maintained by any upon reasonable, non-discriminatory terms and at fair market value.

d. Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to share trench space of any other person or entity franchised by the City, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

## **SECTION 6. BONDS**

a. Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

b. Any extension to the prescribed time limit of one hundred percent (100%) of the initial Network miles within twenty four (24) months shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines that such extension is necessary and appropriate due to causes beyond the control of Grantee.

c. The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law;

and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

d. The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## SECTION 7. INSURANCE

a. Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poor. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of franchise, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

b. Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
2.	Commercial General (public) Liability- to include coverage for the following where the exposure exists:	
	(i) Premises operations	Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
	(ii) Independent contractors	
	(iii) Products/completed	
	(iv) Personal injury	
	(v) Contractual liability	

- (vi) Explosion, collapse and underground property damage
3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:
- (i) Owned/leased automobiles Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent.
  - (ii) Non-owned automobiles
  - (iii) Hired automobiles
- c. The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.
- d. Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:
- (i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
  - (ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
  - (iii) Provide for notice to the Director of Finance by certified mail; and
  - (iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.
- e. The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

f. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

g. The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

h. Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

#### **SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT**

a. The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance to the City manual for Utility Location and Coordination.

b. In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

c. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its Network entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its Network, or to alter, relocate or change its Network to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its Network, or in any way or manner to alter, relocate or change its Network to enable any other entity or person, except for

the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which will be caused by, or arise out of such change, alteration or relocation of Grantee's Network; provided, however, that the City shall never be liable for such reimbursement.

d. In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Director of Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

e. During the term of this agreement, Grantee shall be liable to the City for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## **SECTION 9. COMPLIANCE WITH CITY CHARTER**

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

## **SECTION 10. SERVICE TO THE CITY**

Grantee agrees to provide two (2) dark fiber pair to the City free of cost for its own internal telecommunications use pursuant to the following terms and conditions:

i) Two single mode fiber optic pair will be made available to the City free of cost within the portion of the Grantee's Network constructed within public rights-of way (excluding building entrance links);

ii) sixty days (60) prior to construction, the City shall notify Grantee of its intention to use such fiber along the designated route and the location of city designated splice points;

iii) City shall pay Grantee its direct cost of materials and labor plus fifteen percent (15%) for all building entrances, links, splices or access lines necessary to connect City facilities to Grantee's Network;

iv) Grantee will construct City's building entrance links within one hundred and twenty days of the City's written request;

v) Grantee will provide physical network maintenance for all City fiber and splice points (points contained within Grantee's Network facilities);

vi) these fibers, and the transmission capacity provided hereunder shall not be used, either directly or indirectly, for sale, donation, trade, barter or resale to any third parties;

vii) the City will assist Grantee in obtaining any permits necessary for the purpose of connecting City facilities.

## SECTION 11. COMPENSATION TO THE CITY

a. Acceptance Fee - The Grantee agrees to pay upon completion of construction of its initial Network a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at underground and after acceptance of the agreement pursuant to Section 27. In any event, Grantee's use of leased conduit facilities for Network purposes shall not require this per linear foot charge. Additionally, Grantee shall not be required to pay this fee again in the same duct for additional usage or new franchises by Grantee or its assigns.

b. General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The minimum annual fee for the first year of operation shall be \$5,000.

c. Calculation and Payment on a Quarterly Basis -Grantee shall pay to the City for each quarter an amount equal to the greater of:

(i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or

(ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

d. Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service,
- (viii) all revenues from authorized rental of conduit space,
- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,

(x) all other revenues collected by Grantee from business pursued within the City, and

(xi) Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues .

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12. WAIVER**

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived.

## **SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

a. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

b. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11.



In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

c. Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

d. Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, its books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

e. The City may, at any time, make inquires pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

f. Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance as it relates specifically to the City. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

#### **SECTION 14. RULES AND REGULATIONS**

a. The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

b. In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

#### **SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT**

a. Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, except an affiliated entity, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate, parent or subsidiary during the term of this agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material breach in accordance with Section 21, revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

b. Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services unless such provider or seller has a similar franchise or is otherwise authorized to conduct business in Addison under state or Federal law.

## **SECTION 16. INDEMNITY**

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any bodily injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the Grantor, the intent of this provision being to bring this indemnity provision within the express negligence doctrine; and Grantee shall pay all judgments, with costs, counsel

fees and expenses, which may be obtained against the City from any such claim. City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment for liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

#### **SECTION 17. PRINCIPAL OFFICE LOCATION**

Location of the Grantee's principal office shall be within the Dallas Metro area. Grantee shall always keep and maintain, so far as is practical, specific books, records, contracts, accounts, documents, and papers for its operations within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

#### **SECTION 18. NOTICES**

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P.O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the Dallas Metropolitan area a local telephone number operational during normal business hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

#### **SECTION 19. CONFIDENTIALITY**

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

#### **SECTION 20. VIOLATIONS**

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within ten (10) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds

that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement in the event of a substantial breach under Section 21 and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

## **SECTION 21. TERMINATION**

a. In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its customers within twenty-four (24) months from the date of completion of construction of its initial Network unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

(viii) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner;

(ix) Grantee's failure to operate its Network for twenty four (24) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

## **SECTION 22. POLICE POWERS**

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to and in accordance with the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## **SECTION 23. SAVINGS CLAUSE FOR FIBER OPTICS FRANCHISE AGREEMENTS**

Notwithstanding anything contained in this ordinance to the contrary, in the event that (a) this ordinance or any part hereof, or (b) any procedure provided in this ordinance, or (c) any compensation due the City under this ordinance, becomes, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, MCIM and City shall meet and negotiate a new ordinance that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the new ordinance shall provide the City with a level of compensation comparable to that set forth in this ordinance provided that such compensation is recoverable by MCIM in a mutually agreed manner permitted by law for the unexpired portion of the term of this ordinance.

## **SECTION 23. CITY MANAGER**

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.

**SECTION 24. GOVERNING LAW**

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the United States, the State of Texas, and the Charter and ordinances of the Town of Addison.

**SECTION 25. FORCE MAJEURE**

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

**SECTION 26. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 27. ACCEPTANCE OF AGREEMENT**

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

**SECTION 28. EFFECTIVE DATE**

This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

**SECTION 29. HEADINGS**

The enumeration and headings of the sections of this Ordinance are merely for convenience of reference, do not constitute representations or warranties, do not impose any obligation whatsoever and have no substantive significance.

**DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS** on  
this the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

n:\harlan\addison.dc

Draft - Last Revised:  
06/19/95 (Mon) - 9:56am

(x) all other revenues collected by Grantee from business pursued within the City, and

(xi) Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues .

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by a Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12. WAIVER**

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived.

## **SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

a. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

b. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11.



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06/16/95 (Pty) - 3:59pm

iv) Grantee will construct City's building entrance links within one hundred and twenty days of the City's written request;

v) Grantee will provide physical network maintenance for all City fiber and splice points (points contained within Grantee's Network facilities);

vi) these fibers, and the transmission capacity provided hereunder shall not be used, either directly or indirectly, for sale, donation, trade, barter or resale to any third parties;

vii) the City will assist Grantee in obtaining any permits necessary for the purpose of connecting City facilities;

viii) in case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

## SECTION 11 COMPENSATION TO THE CITY

a. Acceptance Fee - The Grantee agrees to pay upon completion of construction of its initial Network a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at underground and after acceptance of the agreement pursuant to Section 27. In any event, Grantee's use of leased conduit facilities for Network purposes shall not require this per linear foot charge. Additionally, Grantee shall not be required to pay this fee again in the same duct for additional usage or new franchises by Grantee or its assigns.

b. General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The minimum annual fee shall be \$5,000.

c. Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

(i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or

(ii) 5% of Gross Revenues for such quarter.

March 25, 1994

Mr. John Baumgartner  
Director of Public Works  
Town of Addison  
16801 Westgrove Drive  
Addison, Texas 75001

Dear Mr. Baumgartner:

Attached are the two (2) maps of the town of Addison with MFS fiber optic cable routes, existing and future, marked in red as requested.

If you have any questions on this, please feel free to call me at 214-490-9299.

Sincerely,



Bill Pritchett  
Construction Manager

BP/tlb  
encl.

MSA - TP  
for  
DALLAS

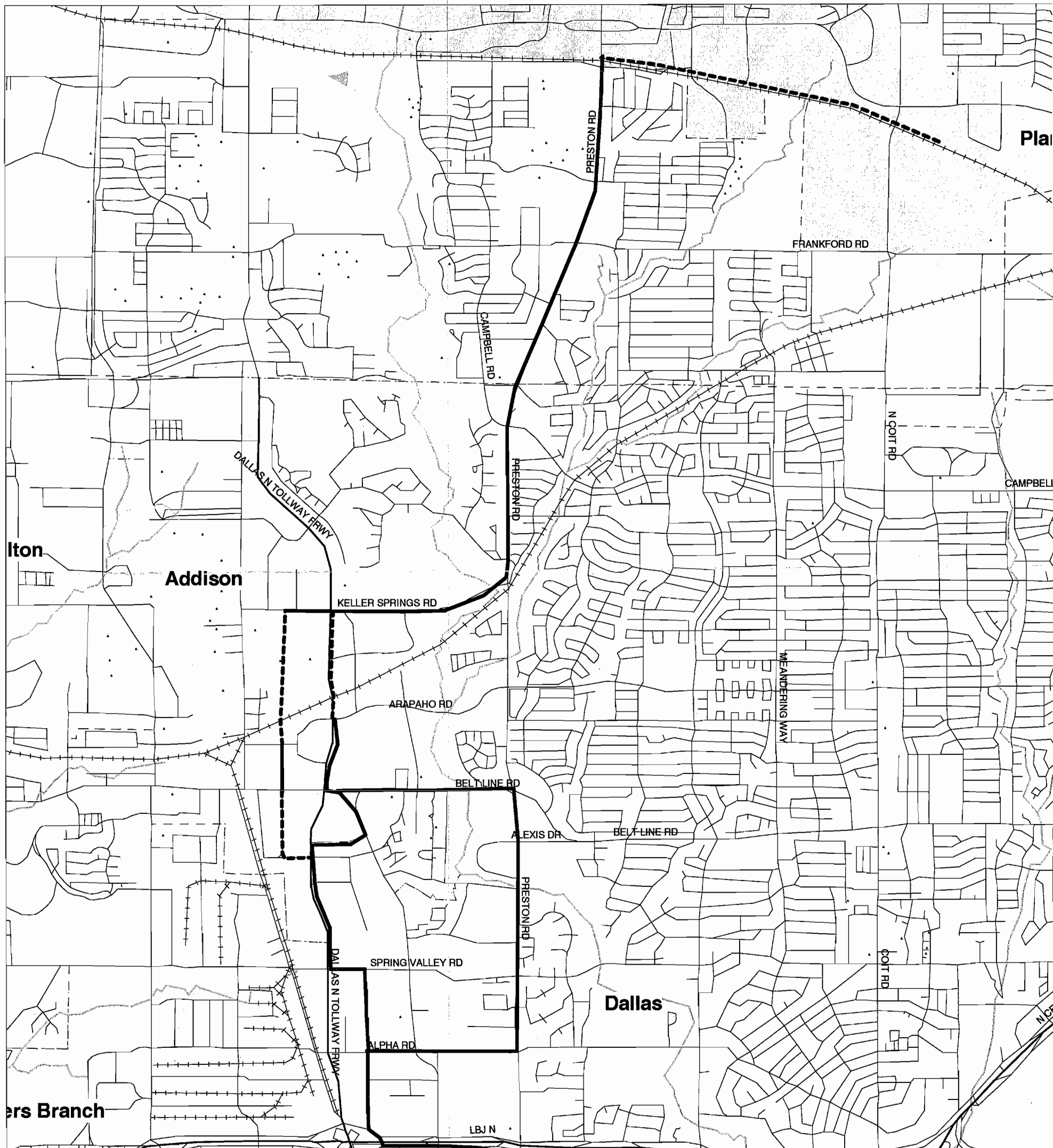
— PROPOSED AERIAL RING  
- - - - - POPOSED UG FIBER



2250 LAKESIDE BLVD.  
RICHARDSON, TX. 75082

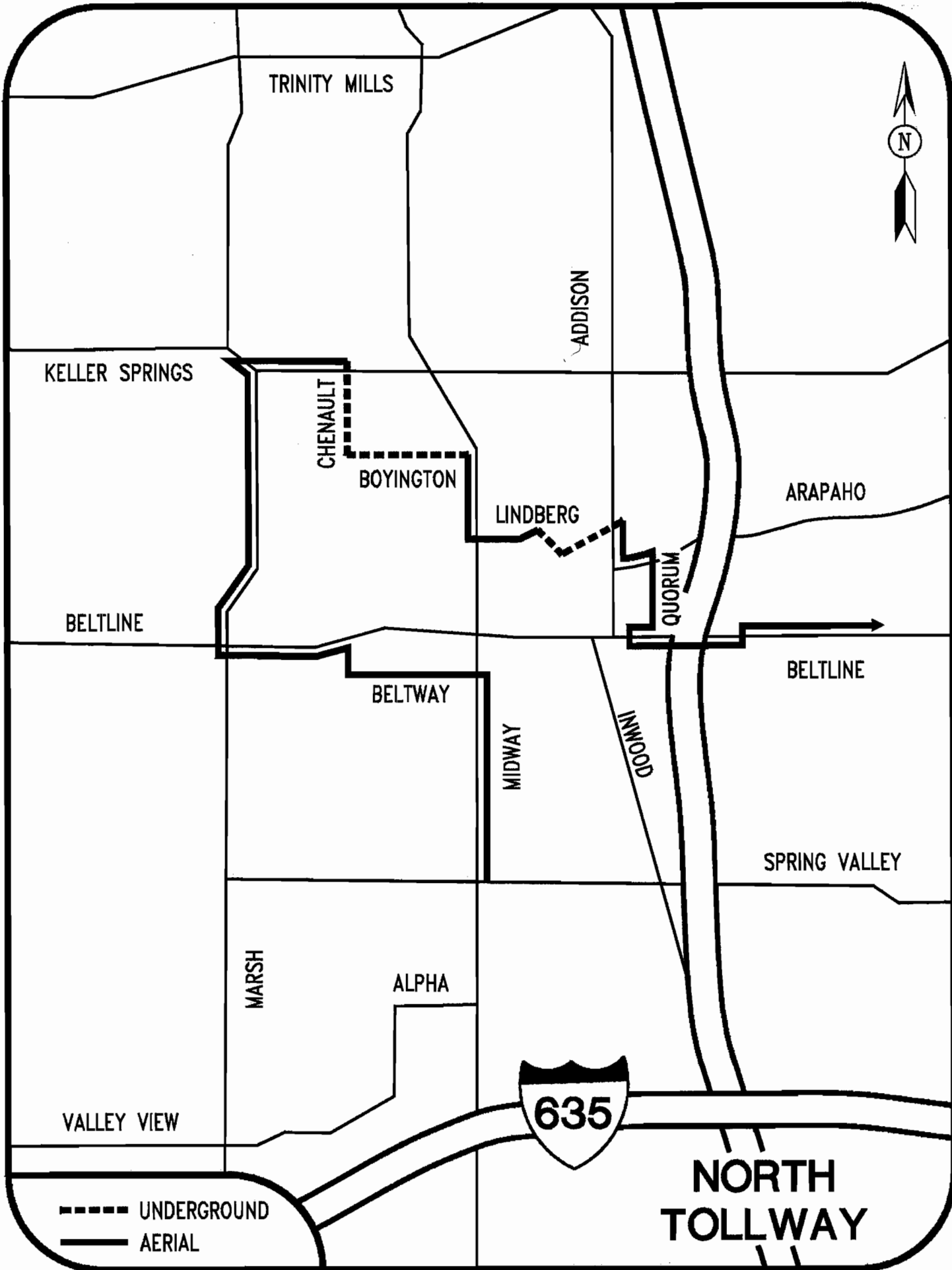
RING 239F  
DALLAS NORTH  
TOLLWAY

April 14, 1995  
Scale: 1" = 2850'  
Sheet: 1 of 2  
dallas\239f\_row



RING239 - DALLAS NORTH TOLLWAY  
R.O.W. MUNICIPAL BREAKDOWN

COUNTY_DIST	CITY_TOWNSHIP	AERIAL_FOOTAGE	UG_FOOTAGE
DALLAS	ADDISON	1370.3	6696.72
DALLAS	DALLAS	93572.81	14957.67
DALLAS	RICHARDSON		45774.22
COLLIN	RICHARDSON		7836.27
COLLING	PLANO		10324.77
	TOTAL DALLAS	94943.11	67428.56
	TOTAL COLLIN	0	18164.04
	TOTAL	94943.11	85592.6



TRINITY MILLS



ADDISON

KELLER SPRINGS

CHENAULT

BOYINGTON

LINDBERG

ARAPAHO

BELTLINE

QUORUM

BELTWAY

BELTLINE

MIDWAY

INWOOD

SPRING VALLEY

MARSH

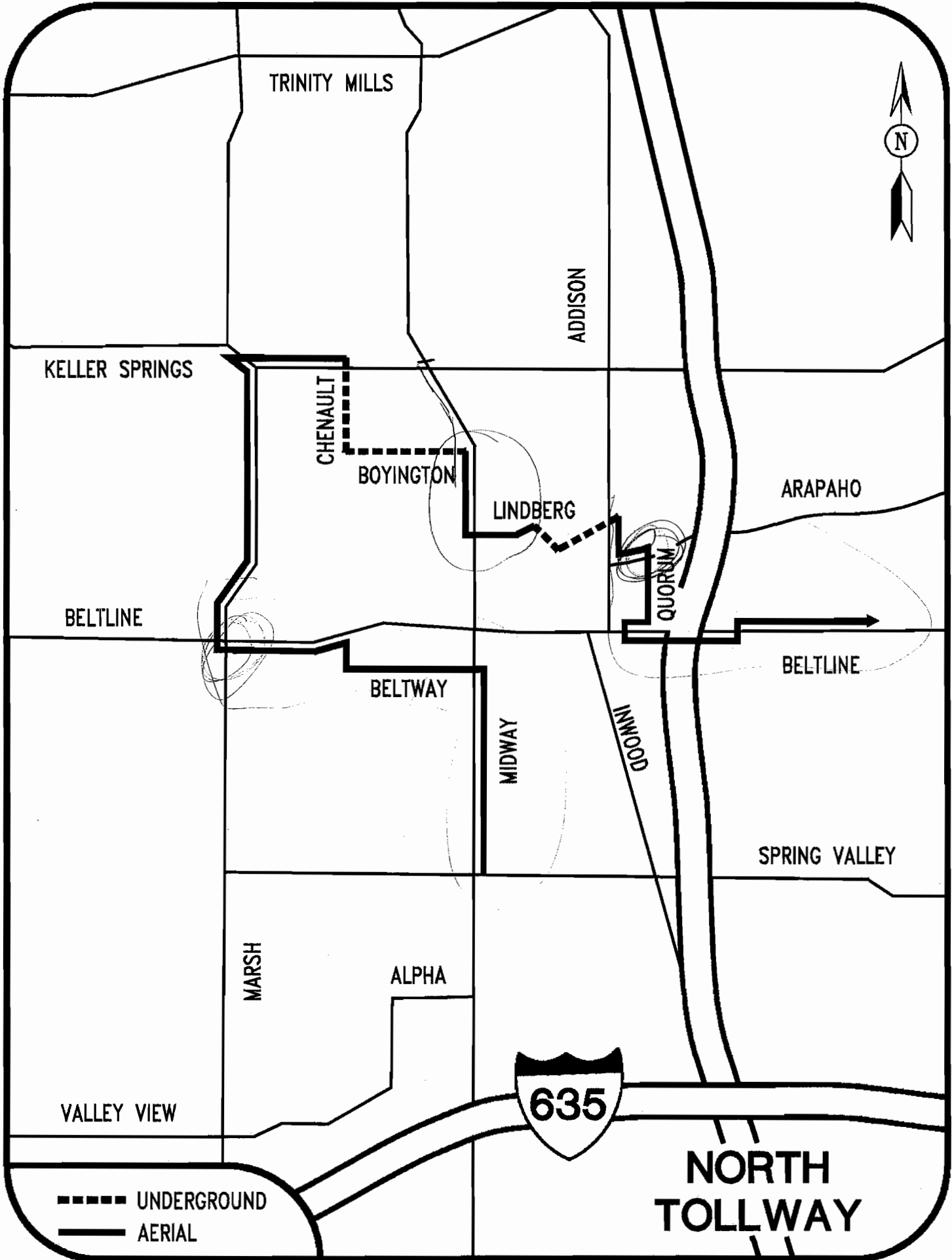
ALPHA

VALLEY VIEW



**NORTH  
TOLLWAY**

- UNDERGROUND
- AERIAL



TRINITY MILLS

ADDISON

KELLER SPRINGS

CHENAULT

BOYINGTON

LINDBERG

ARAPAHO

BELTLINE

QUORUM

BELTWAY

BELTLINE

MIDWAY

INWOOD

SPRING VALLEY

MARSH

ALPHA

VALLEY VIEW



NORTH TOLLWAY

- UNDERGROUND
- AERIAL



Metropolitan Fiber Systems of Dallas, Inc.

ACCEPTANCE OF ORDINANCE NO. 093-047

Metropolitan Fiber Systems of Dallas, Inc., by and through its duly authorized officer, accepts all terms and conditions of the Street Use and Rental Agreement set forth in the Town of Addison Ordinance 093-047 passed and adopted by the City Council of the Town of Addison on August 24, 1993. The caption of said Ordinance being:

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO METROPOLITAN FIBER SYSTEMS OF DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFIRM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

And files this acceptance as required by the terms of the Ordinance.

IN TESTIMONY WHEREOF, witness the corporate signature of Metropolitan Fiber Systems of Dallas, Inc. by its duly authorized officer, this the 14 day of September, 1993.

METROPOLITAN FIBER SYSTEMS OF DALLAS, INC.

  
\_\_\_\_\_  
Authorized Officer

Original acceptance of agreement in Ordinance No. 093-047 of which the foregoing is a true copy was filed in my office on the 20<sup>th</sup> day of SEPTEMBER, 1993, at 3:00 o'clock, P.m.

(SEAL)

C. MORAN  
City Secretary

RECEIVED

SEP - 7 1993

ORDINANCE NO. 093-046

TOWN OF ADDISON  
FINANCE ADMIN.

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO METROPOLITAN FIBER SYSTEMS OF DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

**SECTION 1. DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.



- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean Metropolitan Fiber Systems of Dallas, Inc., a Delaware corporation, its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or re-sale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts).
- K. "Director of Engineering" shall mean the Director of the City's Engineering Department or his designate.
- L. "Minimum Annual Fee" shall be based on the projected Gross Revenue for the first year's operation. Minimum Annual Fee for subsequent years is based on the highest amount paid for any previous year.

- M. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

## **SECTION 2. GRANT OF CERTAIN RIGHTS**

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to Metropolitan Fiber Systems of Dallas, Inc., a corporation, hereinafter called "Grantee", for an initial term of seven (7) years from passage of this streets use and rental agreement (thereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison shall not allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and interexchange carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

## **SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION**

(a) The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the proper City officials.

(b) Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same,

at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

(c) Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

(d) Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

(e) Grantee shall complete construction and full activation of one hundred percent (100%) of its Network within 24 months after passage of this franchise ordinance. Further, Grantee shall be capable of providing service to end use customers no later than twelve (12) months after passage of this agreement ordinance.

#### **SECTION 4. TERM OF AGREEMENT**

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

#### **SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY**

(a) All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all

facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

(b) All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(c) Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share conduit or duct trench space owned and maintained by any other person or entity, or to permit the wires or equipment of any other person or entity authorized by the City to be attached to the facilities owned and maintained by the Grantee, upon reasonable, non-discriminatory terms and at fair market value. Grantee may require any such person or entity to furnish evidence of adequate insurance covering Grantee and adequate bonds covering the performance of the person or entity attaching to Grantee's facilities as a condition precedent to granting permission to any such person or entity to attach wires or equipment to Grantee's facilities; provided Grantee's requirements for such insurance shall be reasonable.

(d) Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to attach its Network to the facilities of any other person or entity franchised by the City or to permit the facilities of any other person or entity to be attached to Grantee's facilities, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice. Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

## SECTION 6. BONDS

(a) Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in

the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Grantee to satisfactorily construct, complete and fully activate one hundred percent (100%) of Network miles within 24 months after passage of this ordinance.

(b) Any extension to the prescribed time limit of one hundred percent (100%) of Network miles within 24 hours shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines that such extension is necessary and appropriate due to causes beyond the control of Grantee.

(c) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

(d) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## **SECTION 7. INSURANCE**

(a) Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of franchise, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

(b) Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
2. Commercial General (public) Liability - to include coverage for the following where the exposure exists:	
(i) Premises operations	Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
(ii) Independent contractors	
(iii) Products/completed	
(iv) Personal injury	
(v) Contractual liability	
(vi) Explosion, collapse and underground property damage	
3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:	
(i) Owned/leased automobiles	Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent
(ii) Non-owned automobiles	
(ii) Hired automobiles	

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City,

Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

(d) Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

(i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;

(ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;

(iii) Provide for notice to the Director of Finance by certified mail; and

(iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(e) The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

(h) Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

**SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT**

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance to the City manual for Utility Location and Coordination.

(b) In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

(c) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City, without claim for reimbursement or damages against the City.

(d) In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Director of Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction, the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

(e) During the term of this agreement, Grantee shall be liable for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## **SECTION 9. COMPLIANCE WITH CITY CHARTER**

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter.



Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

#### SECTION 10. SERVICE TO THE CITY

Grantee, at its sole cost and expense, shall be required to provide to City for its own use, but not for resale, two (2) fiber pairs ("fiber facility") as determined by City throughout the portion of the Network used for transmission purposes (the "Backbone"), including lateral lines in public rights-of-way connecting the end user's location to that portion of the Network. In case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

#### SECTION 11. COMPENSATION TO THE CITY

(a) Acceptance Fee - The Grantee agrees to pay a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at acceptance of the agreement pursuant to Section 27.

(b) General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee for the first year of operation shall be \$5,000. The Minimum Annual Fee for subsequent years shall be equal to the highest amount paid to the City as General Compensation for any previous year.

(c) Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

(i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or

(ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(d) Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service
- (viii) all revenues from authorized rental of conduit space,
- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,
- (x) all other revenues collected by Grantee from business pursued within the City, and

(xi) recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be audited by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12. WAIVER**

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived, provided, however, the City Council retains the right to terminate this agreement ordinance, whenever in its judgment Grantee's use of the public streets, alleys, and rights-of-way is inconsistent with the public use or whenever the Grantee's use is likely to become a nuisance.

## **SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

(a) Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

(b) Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principals, subject to approval by the City. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47CFR Part 32 or its successor and as may be further described herein. The City may require the

keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City.

In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 11, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

(c) Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(d) Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

(e) The City may, at any time, make inquiries pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

(f) Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

#### **SECTION 14. RULES AND REGULATIONS**

(a) The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

(b) In order to ascertain any and all facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, (iii) compel the attendance of witnesses and the production of books and records, and (iv) prescribe penalties for the failure or refusal of Grantee to testify or to produce books and records from time to time as required.

#### **SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT**

(a) Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, corporation affiliate or entity, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate once during the term of this agreement with prior notice and consent of City. In the event that the purchaser is the holder of a like agreement held by the purchaser upon such terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

(b) Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services for the purpose of serving the reseller's own customers, except for the purpose of directly serving Grantee's end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services); provided, however, access services from interexchange or long distance carriers is not required.

#### **SECTION 16. INDEMNITY**

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any injuries or damages received or sustained by any person, firm or corporation

or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the Grantor, the intent of this provision being to bring this indemnity provision within the express negligence doctrine; and Grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City related to any such claim - City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment or liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

#### **SECTION 17. PRINCIPAL OFFICE LOCATION**

Location of the Grantee's principal office shall be within the Dallas Metro area. Grantee shall always keep and maintain specific books, records, contracts, accounts, documents, and papers for its operations within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

#### **SECTION 18. NOTICES**

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P. O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the City a local telephone number operational during normal business hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

#### **SECTION 19. CONFIDENTIALITY**

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

## **SECTION 20. VIOLATIONS**

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within five (5) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

## **SECTION 21. FORFEITURE AND TERMINATION**

(a) In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's end-user customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its end-user customers within twelve (12) months from the date of this agreement, unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

(viii) Grantee's failure to respond or comply with City requested reports, audits, statements and other information;

(ix) Grantee's failure to operate its Network for six (6) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

## **SECTION 22. POLICE POWERS**

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## **SECTION 23. CITY MANAGER**

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and



enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.

#### **SECTION 24. GOVERNING LAW**

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the State of Texas and the Charter and ordinances of the Town of Addison.

#### **SECTION 25. FORCE MAJEURE**

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force Majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

#### **SECTION 26. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

#### **SECTION 27. ACCEPTANCE OF AGREEMENT**

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

#### **SECTION 28. EFFECTIVE DATE**

This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,  
TEXAS, on this the 24th day of August, 1993.

  
MAYOR

ATTEST:

  
CITY SECRETARY

RECEIVED

SEP - 7 1993

ORDINANCE NO. 093-046

TOWN OF ADDISON  
FINANCE ADMIN.

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO METROPOLITAN FIBER SYSTEMS OF DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

**SECTION 1. DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.

- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean Metropolitan Fiber Systems of Dallas, Inc., a Delaware corporation, its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or re-sale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts).
- K. "Director of Engineering" shall mean the Director of the City's Engineering Department or his designate.
- L. "Minimum Annual Fee" shall be based on the projected Gross Revenue for the first year's operation. Minimum Annual Fee for subsequent years is based on the highest amount paid for any previous year.

- M. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

## **SECTION 2. GRANT OF CERTAIN RIGHTS**

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to Metropolitan Fiber Systems of Dallas, Inc., a corporation, hereinafter called "Grantee", for an initial term of seven (7) years from passage of this streets use and rental agreement (hereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison shall not allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and interexchange carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

## **SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION**

(a) The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the proper City officials.

(b) Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same,

at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

(c) Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

(d) Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

(e) Grantee shall complete construction and full activation of one hundred percent (100%) of its Network within 24 months after passage of this franchise ordinance. Further, Grantee shall be capable of providing service to end use customers no later than twelve (12) months after passage of this agreement ordinance.

#### **SECTION 4. TERM OF AGREEMENT**

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

#### **SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY**

(a) All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all

facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

(b) All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(c) Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share conduit or duct trench space owned and maintained by any other person or entity, or to permit the wires or equipment of any other person or entity authorized by the City to be attached to the facilities owned and maintained by the Grantee, upon reasonable, non-discriminatory terms and at fair market value. Grantee may require any such person or entity to furnish evidence of adequate insurance covering Grantee and adequate bonds covering the performance of the person or entity attaching to Grantee's facilities as a condition precedent to granting permission to any such person or entity to attach wires or equipment to Grantee's facilities; provided Grantee's requirements for such insurance shall be reasonable.

(d) Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to attach its Network to the facilities of any other person or entity franchised by the City or to permit the facilities of any other person or entity to be attached to Grantee's facilities, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice. Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

## SECTION 6. BONDS

(a) Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in

the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Grantee to satisfactorily construct, complete and fully activate one hundred percent (100%) of Network miles within 24 months after passage of this ordinance.

(b) Any extension to the prescribed time limit of one hundred percent (100%) of Network miles within 24 hours shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines that such extension is necessary and appropriate due to causes beyond the control of Grantee.

(c) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

(d) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## SECTION 7. INSURANCE

(a) Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of franchise, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.



(b) Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
2. Commercial General (public) Liability - to include coverage for the following where the exposure exists:	
(i) Premises operations	Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
(ii) Independent contractors	
(iii) Products/completed	
(iv) Personal injury	
(v) Contractual liability	
(vi) Explosion, collapse and underground property damage	
3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:	
(i) Owned/leased automobiles	Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent
(ii) Non-owed automobiles	
(ii) Hired automobiles	

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City,

Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

(d) Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

(i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;

(ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;

(iii) Provide for notice to the Director of Finance by certified mail; and

(iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(e) The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

(h) Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

**SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT**

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance to the City manual for Utility Location and Coordination.

(b) In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

(c) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City, without claim for reimbursement or damages against the City.

(d) In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Director of Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction, the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

(e) During the term of this agreement, Grantee shall be liable for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## **SECTION 9. COMPLIANCE WITH CITY CHARTER**

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter.

Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

#### SECTION 10. SERVICE TO THE CITY

Grantee, at its sole cost and expense, shall be required to provide to City for its own use, but not for resale, two (2) fiber pairs ("fiber facility") as determined by City throughout the portion of the Network used for transmission purposes (the "Backbone"), including lateral lines in public rights-of-way connecting the end user's location to that portion of the Network. In case of emergency or diaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

#### SECTION 11. COMPENSATION TO THE CITY

(a) Acceptance Fee - The Grantee agrees to pay a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at acceptance of the agreement pursuant to Section 27.

(b) General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee for the first year of operation shall be \$5,000. The Minimum Annual Fee for subsequent years shall be equal to the highest amount paid to the City as General Compensation for any previous year.

(c) Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

- (i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or
- (ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(d) Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service
- (viii) all revenues from authorized rental of conduit space,
- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,
- (x) all other revenues collected by Grantee from business pursued within the City, and

(xi) recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be audited by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12. WAIVER**

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived, provided, however, the City Council retains the right to terminate this agreement ordinance, whenever in its judgment Grantee's use of the public streets, alleys, and rights-of-way is inconsistent with the public use or whenever the Grantee's use is likely to become a nuisance.

## **SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

(a) Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

(b) Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principals, subject to approval by the City. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47CFR Part 32 or its successor and as may be further described herein. The City may require the

keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City.

In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 11, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

(c) Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(d) Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

(e) The City may, at any time, make inquires pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

(f) Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

#### **SECTION 14. RULES AND REGULATIONS**

(a) The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

(b) In order to ascertain any and all facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, (iii) compel the attendance of witnesses and the production of books and records, and (iv) prescribe penalties for the failure or refusal of Grantee to testify or to produce books and records from time to time as required.

#### **SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT**

(a) Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, corporation affiliate or entity, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate once during the term of this agreement with prior notice and consent of City. In the event that the purchaser is the holder of a like agreement held by the purchaser upon such terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

(b) Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services for the purpose of serving the reseller's own customers, except for the purpose of directly serving Grantee's end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services); provided, however, access services from interexchange or long distance carriers is not required.

#### **SECTION 16. INDEMNITY**

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any injuries or damages received or sustained by any person, firm or corporation



or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the Grantor, the intent of this provision being to bring this indemnity provision within the express negligence doctrine; and Grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City related to any such claim - City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment or liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

#### **SECTION 17. PRINCIPAL OFFICE LOCATION**

Location of the Grantee's principal office shall be within the Dallas Metro area. Grantee shall always keep and maintain specific books, records, contracts, accounts, documents, and papers for its operations within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

#### **SECTION 18. NOTICES**

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P. O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the City a local telephone number operational during normal business hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

#### **SECTION 19. CONFIDENTIALITY**

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

## **SECTION 20. VIOLATIONS**

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within five (5) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

## **SECTION 21. FORFEITURE AND TERMINATION**

(a) In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's end-user customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its end-user customers within twelve (12) months from the date of this agreement, unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

(viii) Grantee's failure to respond or comply with City requested reports, audits, statements and other information;

(ix) Grantee's failure to operate its Network for six (6) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

## **SECTION 22. POLICE POWERS**

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## **SECTION 23. CITY MANAGER**

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and

enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.

#### **SECTION 24. GOVERNING LAW**

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the State of Texas and the Charter and ordinances of the Town of Addison.

#### **SECTION 25. FORCE MAJEURE**

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force Majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

#### **SECTION 26. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

#### **SECTION 27. ACCEPTANCE OF AGREEMENT**

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

#### **SECTION 28. EFFECTIVE DATE**

This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,  
TEXAS, on this the 24th day of August, 1993.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY SECRETARY

Metropolitan Fiber Systems of Dallas, Inc.

ACCEPTANCE OF ORDINANCE NO. 093-047

Metropolitan Fiber Systems of Dallas, Inc., by and through its duly authorized officer, accepts all terms and conditions of the Street Use and Rental Agreement set forth in the Town of Addison Ordinance 093-047 passed and adopted by the City Council of the Town of Addison on August 24, 1993. The caption of said Ordinance being:

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO METROPOLITAN FIBER SYSTEMS OF DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFIRM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

And files this acceptance as required by the terms of the Ordinance.


IN TESTIMONY WHEREOF, witness the corporate signature of Metropolitan Fiber Systems of Dallas, Inc. by its duly authorized officer, this the 14 day of September, 1993.

METROPOLITAN FIBER SYSTEMS OF DALLAS, INC.

  
\_\_\_\_\_  
Authorized Officer

Original acceptance of agreement in Ordinance No. 093-047 of which the foregoing is a true copy was filed in my office on the 20<sup>th</sup> day of SEPTEMBER, 1993, at 3:00 o'clock, P.m.

(SEAL)

  
\_\_\_\_\_  
City Secretary

COPY

**ORDINANCE NO. 095-029**

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO MCI METRO ACCESS TRANSMISSION SERVICES, INC. ("MCIM") A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**SECTION 1. DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground for the initial construction phase. Initial construction phase shall mean the initial loop built within the City as part of an initial Dallas Metroplex loop.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.



- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" or "Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean MCI Metro Acces Transmission Services, Inc., its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursement.
- K. "Director of Public Works" shall mean the Director of the City's Engineering Department or City Engineer.
- L. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

## **SECTION 2. GRANT OF CERTAIN RIGHTS**

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to MCI Metro Access Transmission Services, Inc., a corporation, hereinafter called "Grantee", for an initial term of ten (10) years from passage of this streets use and rental agreement (thereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to telecommunications services including: audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC, state or federal law. Grantee shall not provide cable services or operate a cable system as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison and shall not allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and common carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

## **SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION**

(a) The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

(b) Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the

construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

(c) Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

(d) Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

(e) Grantee shall complete construction and full activation of its initial Network within twenty-four (24) months after passage of this agreement ordinance. Further, Grantee shall be capable of providing service to customers no later than twenty-four (24) months after completion of construction of its initial Network.

#### **SECTION 4. TERM OF AGREEMENT**

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

#### **SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY**

(a) All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

(b) All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(c) Subject to reasonable availability and agreement between the parties concerning maintenance, access and security, Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share duct trench space owned and maintained by any other person or entity upon reasonable, non-discriminatory terms and at fair market value. The intent of this section is to encourage shared use of the infrastructure and decrease excavation of the City's rights-of-way.

(d) Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to share trench space of any other person or entity franchised by the City, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

## **SECTION 6. BONDS**

(a) Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

(b) Any extension to the prescribed time limit of one hundred percent (100%) of the initial Network miles within twenty-four (24) months shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines

that such extension is necessary and appropriate due to causes beyond the control of Grantee.

(c) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

(d) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

## **SECTION 7. INSURANCE**

(a) Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of filing the acceptance of this agreement ordinance, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

(b) Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

	<b>TYPE</b>	<b>AMOUNT</b>
1.	Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000

2. Commercial General (public) Liability -  
to include coverage for the following  
where the exposure exists:

- |       |  |  |
|-------|--|--|
| (i)   | Premises operations                                    | Combined single<br>limit for bodily<br>injury and property<br>damages \$3,000,000<br>per occurrence or<br>its equivalent |
| (ii)  | Independent contractors                                |  |
| (iii) | Products/completed                                     |  |
| (iv)  | Personal injury  |  |
| (v)   | Contractual liability                                  |  |
| (vi)  | Explosion, collapse and underground<br>property damage |  |

3. Comprehensive automobile insurance  
coverage for loading and unloading  
hazards, for:

- |      |                          |   |
|------|--------------------------|---|
| (i)  | Owned/leased automobiles | Combined single<br>limit for bodily<br>injury and property<br>damage \$1,000,000<br>per occurrence or<br>its equivalent |
| (ii) | Non-owed automobiles     |   |
| (ii) | Hired automobiles        |   |

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

(d) Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

- (i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;

(ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;

(iii) Provide for notice to the Director of Finance by certified mail; and

(iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard of care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(e) The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

(h) Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

#### **SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT**

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance with the City manual for Utility Location and Coordination.

(b) In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting

landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

(c) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its Network entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its Network, or to alter, relocate or change its Network to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its Network, or in any way or manner to alter, relocate or change its Network to enable any other entity or person, except for the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which will be caused by, or arise out of such change, alteration or relocation of Grantee's Network; provided, however, that the City shall never be liable for such reimbursement.

(d) In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction, the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all costs of relocation.

(e) During the term of this agreement, Grantee shall be liable to the city for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

## **SECTION 9. COMPLIANCE WITH CITY CHARTER**

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.



## **SECTION 10. SERVICE TO THE CITY**

Grantee agrees to provide two (2) dark fiber pair to the City free of cost for its own internal telecommunications use pursuant to the following terms and conditions:

i) Two single mode fiber optic pair will be made available to the City free of cost within the portion of the Grantee's Network constructed within public rights-of-way (excluding building entrance links);

ii) sixty (60) days prior to construction, the City shall notify Grantee of its intention to use such fiber along the designated route and the location of city designated splice points;

iii) City shall pay Grantee its direct cost of materials and labor plus fifteen percent (15%) for all building entrances, links, splices or access lines necessary to connect City facilities to Grantee's Network;

iv) Grantee will construct City's building entrance links within one hundred and twenty (120) days of the City's written request;

v) Grantee will provide physical network maintenance for all City fiber and splice points (points contained within Grantee's Network facilities);

vi) these fibers, and the transmission capacity provided hereunder shall not be use, either directly or indirectly, for sale, donation, trade, barter or resale to any third parties;

vii) the City will assist Grantee in obtaining any permits necessary for the purpose of connecting City facilities.

## **SECTION 11. COMPENSATION TO THE CITY**

(a) Acceptance Fee - The Grantee agrees to pay upon completion of construction of its initial Network a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground and after acceptance of the agreement pursuant to Section 27. In any event, Grantee's use of leased conduit facilities for Network purposes shall not require this per linear foot charge. Additionally, Grantee shall not be required to pay this fee again in the same duct for additional usage or new franchises by Grantee or its assigns.

(b) General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee

agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee for the first year of operation shall be \$5,000.

(c) Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

- (i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or
- (ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(d) Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation Year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,

- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service,
- (viii) all revenues from authorized rental of conduit space,
- (ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,
- (x) all other revenues collected by Grantee from business pursued within the City, and
- (xi) unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

## **SECTION 12. WAIVER**

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived.

## **SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS**

- (a) Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and

repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

(b) Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11.

In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

(c) Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(d) Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, its books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

(e) The City may, at any time, make inquiries pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

(f) Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance as it relates specifically to the City. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

## **SECTION 14. RULES AND REGULATIONS**

(a) The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

(b) In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

## **SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT**

(a) Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person or firm, except an affiliated entity, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate, parent or subsidiary during the term of this agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement, the agreement purchased shall be canceled and merged into one or the other agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material breach in accordance with Section 21, revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

(b) Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services unless such provider or seller has a similar franchise or is otherwise authorized to conduct business in Addison under state or federal law.

## **SECTION 16. INDEMNITY**

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any bodily injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the Grantor, the intent of this provision being to bring this indemnity provision within the express negligence doctrine; and Grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City from any such claim. City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment for liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

## **SECTION 17. PRINCIPAL OFFICE LOCATION**

Location of the Grantee's principal office shall be within the Dallas Metropolitan area. Grantee shall always keep and maintain, so far as is practical, specific books, records, contracts, accounts, documents, and papers for its operations within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

## **SECTION 18. NOTICES**

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P. O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the Dallas Metropolitan area a local telephone number operational during normal business

hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

#### **SECTION 19. CONFIDENTIALITY**

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

#### **SECTION 20. VIOLATIONS**

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within ten (10) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement in the event of a substantial breach under Section 21 and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

#### **SECTION 21. TERMINATION**

(a) In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its customers within twenty-four (24) months from the date of completion of construction of its initial Network, unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

(viii) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner;

(ix) Grantee's failure to operate its Network for twenty-four (24) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

## **SECTION 22. POLICE POWERS**

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to and in accordance with the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.



## **SECTION 23. SAVINGS CLAUSE FOR FIBER OPTICS FRANCHISE AGREEMENTS**

Notwithstanding anything contained in this ordinance to the contrary, in the event that (a) this ordinance or any part hereof, or (b) any procedure provided in this ordinance, or (c) any compensation due the City under this ordinance, becomes, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, MCIM and City shall meet and negotiate a new ordinance that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the new ordinance shall provide the City with a level of compensation comparable to that set forth in this ordinance provided that such compensation is recoverable by MCIM in a mutually agreed manner permitted by law for the unexpired portion of the term of this ordinance.

## **SECTION 24. CITY MANAGER**

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.

## **SECTION 25. GOVERNING LAW**

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the United States, the State of Texas, and the Charter and ordinances of the Town of Addison.

## **SECTION 26. FORCE MAJEURE**

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

## **SECTION 27. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 28. ACCEPTANCE OF AGREEMENT**

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

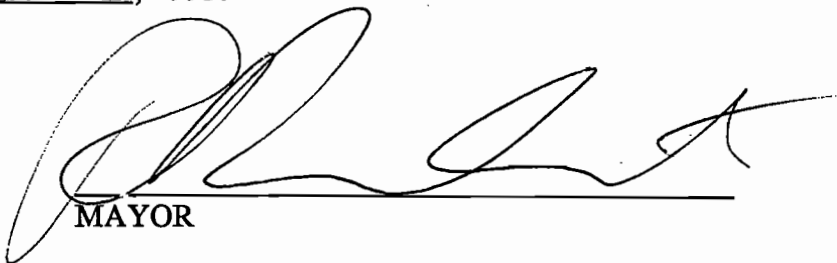
**SECTION 29. EFFECTIVE DATE**

This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

**SECTION 30. HEADINGS**

The enumeration and headings of the sections of this ordinance are merely for convenience of reference, do not constitute representations or warranties, do not impose any obligation whatsoever and have no substantive significance.

**DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,  
TEXAS, on this the 27<sup>th</sup> day of June, 1995.**



MAYOR

ATTEST:




CITY SECRETARY

**ACKNOWLEDGEMENT OF ACCEPTANCE OF ASSIGNMENT**

On June 27, 1995, the City Council of the Town of Addison, Texas, adopted Ordinance 095-29 adopted the Ordinance granting MCI Metro Access Transmission Services, Inc. a Street Use Rental Agreement for the purpose of construction, maintaining and operating a fiber optic network on public streets, alleys, and rights-of-way in the Town of Addison. MCI Metro Access Transmission Services, Inc. does hereby accept the Agreement and Ordinance and all terms and conditions thereof.

MCI METRO ACCESS TRANSMISSION  
SERVICES, INC.

By: 

Print Name: Steven D. Shannon

Print Title: Vice President

ATTEST

  
Richard Strom  
Assistant Secretary

# IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2

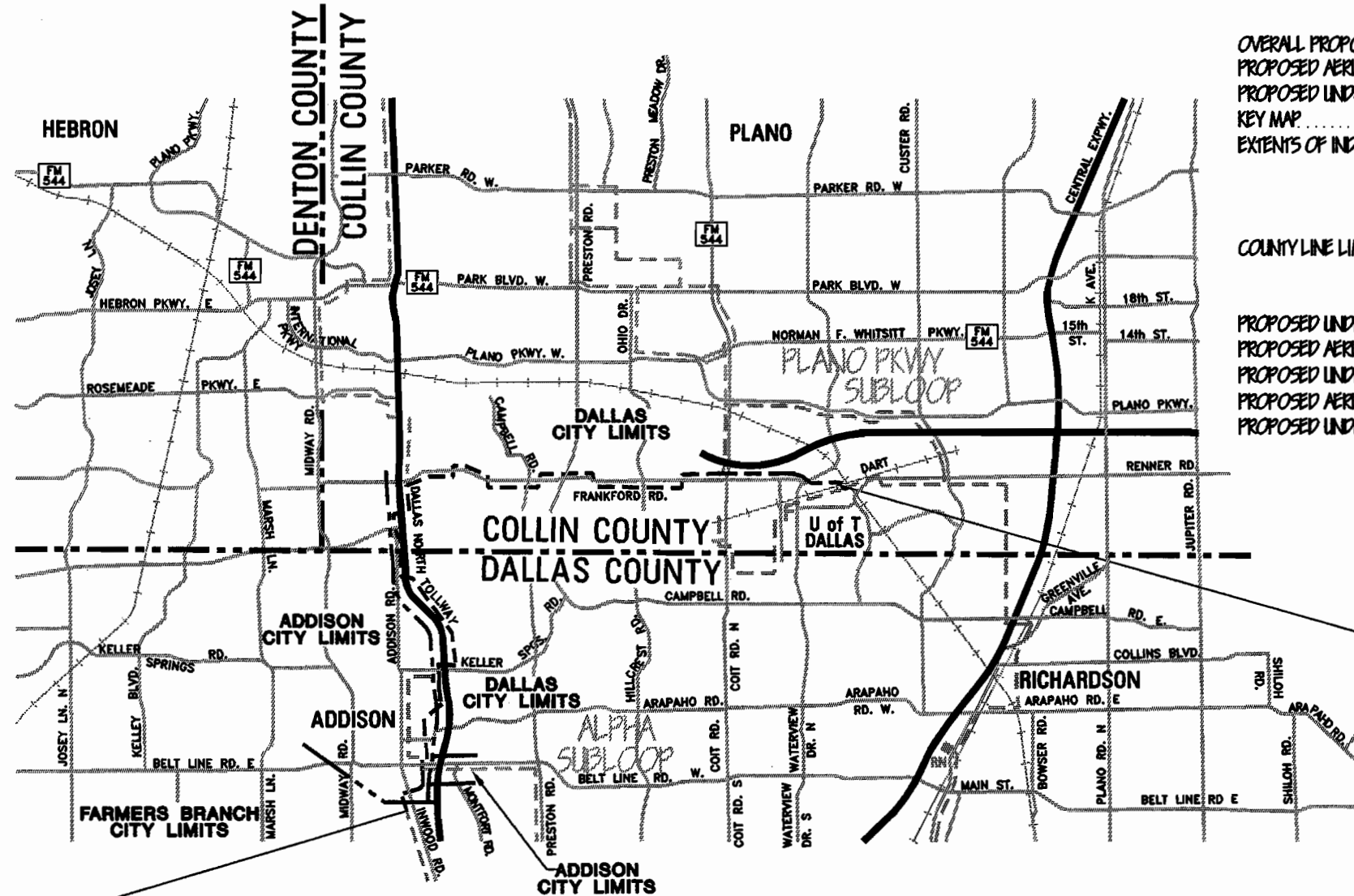
PROJECT #  
DFW070

## OVERALL ROUTE LOCATION MAP



**LEGEND**

- AERIAL
- UNDERGROUND
- - - - - EXTENTS OF CITY LIMITS
- - - - - COUNTY LINE



DRAWING INDEX

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PROPOSED UNDERGROUND FACILITY MAP	3 of 107
KEY MAP	A of 107
EXTENTS OF INDIVIDUAL CITY LIMITS	B, C, & D of 107
FARMERS BRANCH CITY LIMITS	B
ADDISON CITY LIMITS	C
DALLAS CITY LIMITS	D
COUNTY LINE LIMITS - DALLAS CITY LIMITS	E, F of 107
DALLAS COUNTY	E
COLLIN COUNTY	F
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PROPOSED AERIAL CONSTRUCTION DRAWINGS	19 - 24 of 107
PROPOSED UNDERGROUND CONSTRUCTION DRAWINGS	25 - 38 of 107
PROPOSED AERIAL CONSTRUCTION DRAWINGS	39 - 106 of 107
PROPOSED UNDERGROUND CONSTRUCTION DRAWING	107 of 107

BEGIN PHASE 2

END PART 1  
PHASE 2

SAFETY FIRST!



**PROPRIETARY**  
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**CONSTRUCTION ISSUE**

DALLAS/COLLIN COUNTIES  
FARMERS BRANCH CITY LIMITS  
ADDISON CITY LIMITS  
DALLAS CITY LIMITS

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLVCV201	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 1 OF 107
DATE: 20 MAY 97		

# IRVING - DALLAS NORTH LOOP

## PART 1 - PHASE 2

### ADDISON CITY LIMITS DALLAS COUNTY

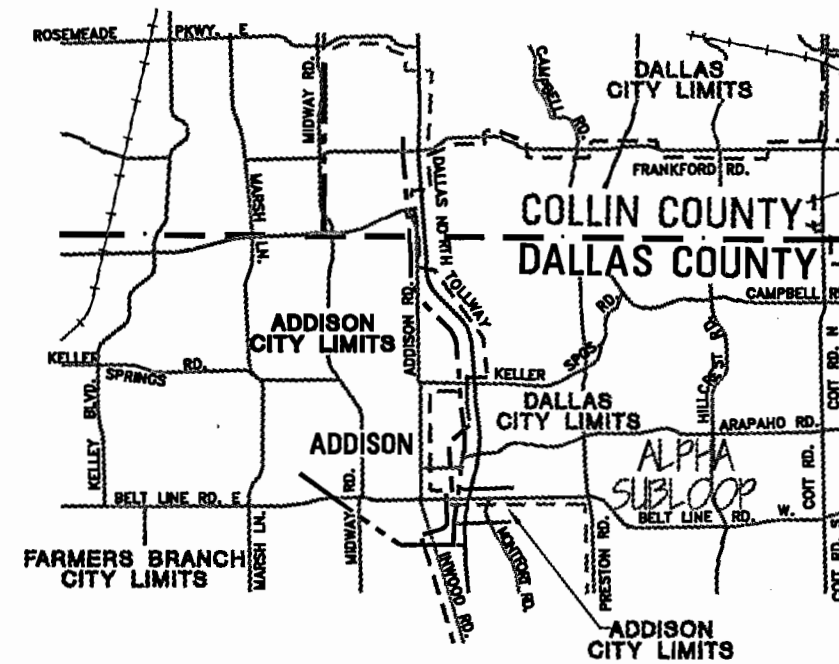


REEL #

IDNL05

GROUND LENGTH	SHEATH LENGTH
7,750'	8,702'
<b>7,750'</b>	<b>8,702'</b>

**TOTAL LENGTHS**



LEGEND

- PROPOSED AERIAL FACILITY
- PROPOSED UNDERGROUND FACILITY
- - - - - EXTENTS OF CITY LIMITS
- · — · — COUNTY LINE

**SAFETY FIRST!**



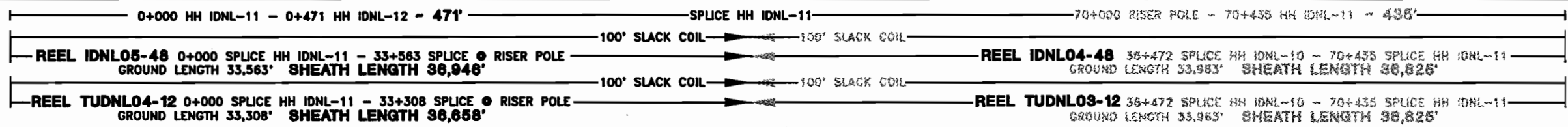
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**CONSTRUCTION ISSUE**  
ADDISON CITY LIMITS  
DALLAS COUNTY

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLCV20E	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. E OF 107
DATE: 20 MAY 97		



INSTALL  
REEL IDNL05-48 &  
REEL TUDNL04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

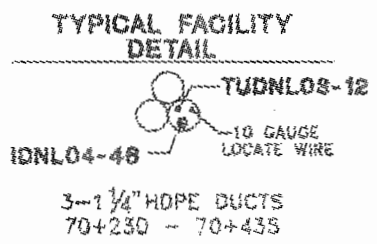
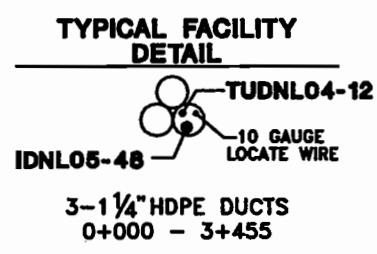
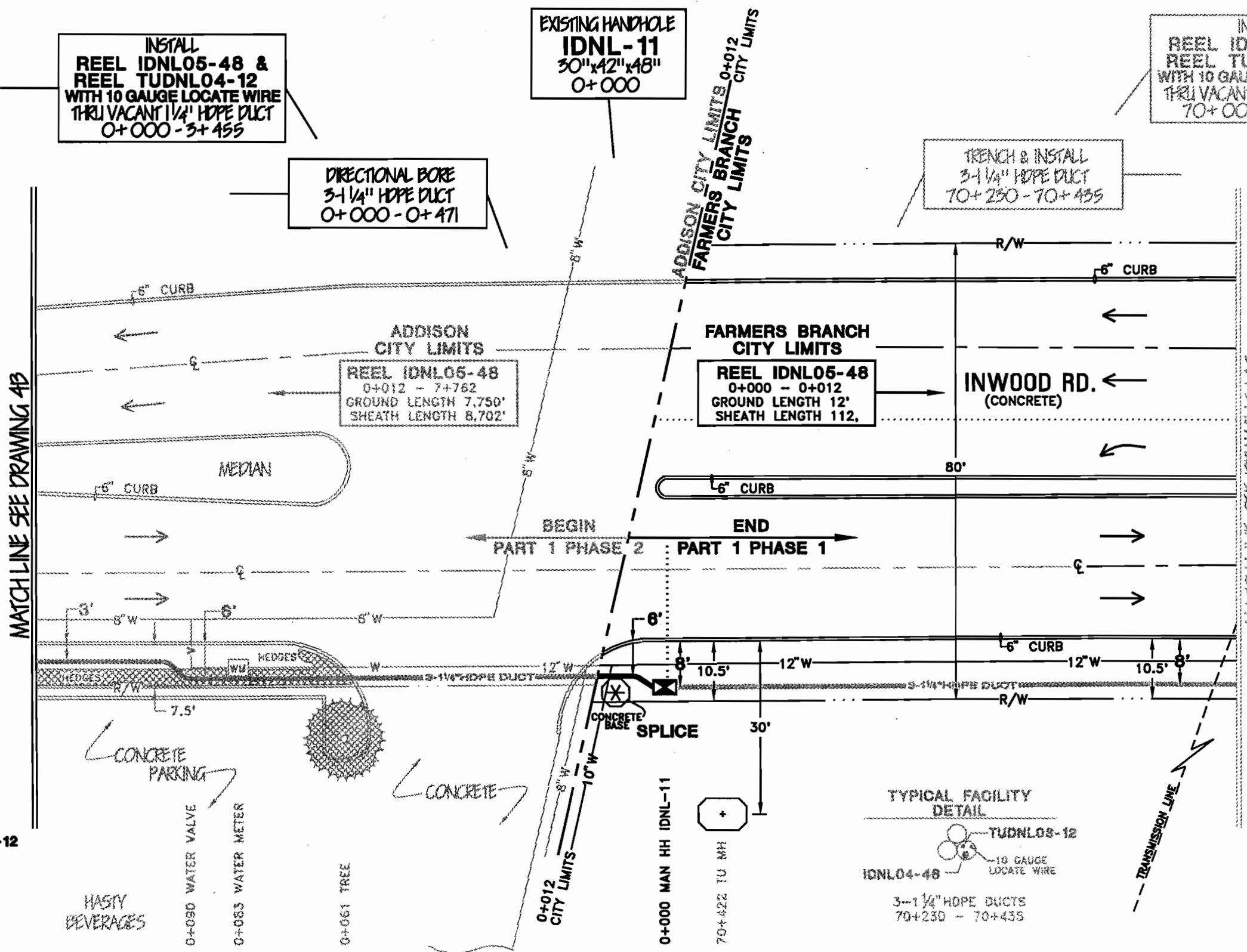
EXISTING HANDHOLE  
IDNL-11  
30"x42"x48"  
0+000

INSTALL  
REEL IDNL04-48 &  
REEL TUDNL03-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
70+000 - 70+435

DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
0+000 - 0+471

TRENCH & INSTALL  
3-1/4" HDPE DUCT  
70+230 - 70+435

SEE  
IRVING - DALLAS NORTH LOOP  
PART 1 - PHASE 1  
DRAWING 146 OF 152  
FOR CONTINUATION  
(REELS IDNL04-48 & TUDNL03-12)



**SAFETY FIRST!**



**METRO ACCESS NETWORKS, INC.**

**LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!**  
DIGRESS 1-800-344-8377

PLAN  
1"=20'

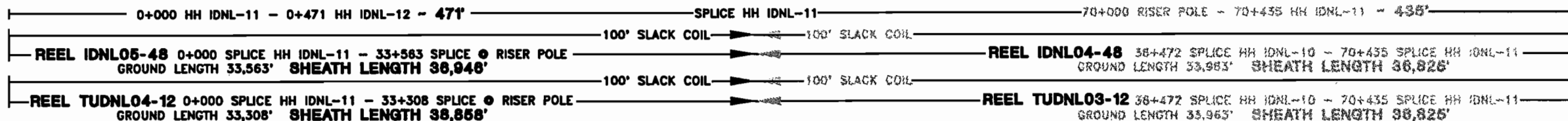
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**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
FARMERS BRANCH &  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB2146	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 4A OF 107
DATE: 2 MAY 97		



DIRECTION OF ENGINEERING ←

INSTALL  
REEL IDNL05-48 &  
REEL TUDNLO4-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

EXISTING HANDHOLE  
IDNL-11  
30" x 42" x 48"  
0+000

INSTALL  
REEL IDNL04-48 &  
REEL TUDNLO3-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
70+000 - 70+435

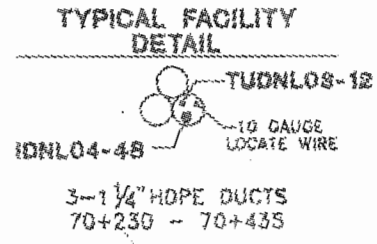
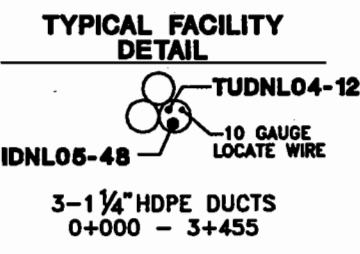
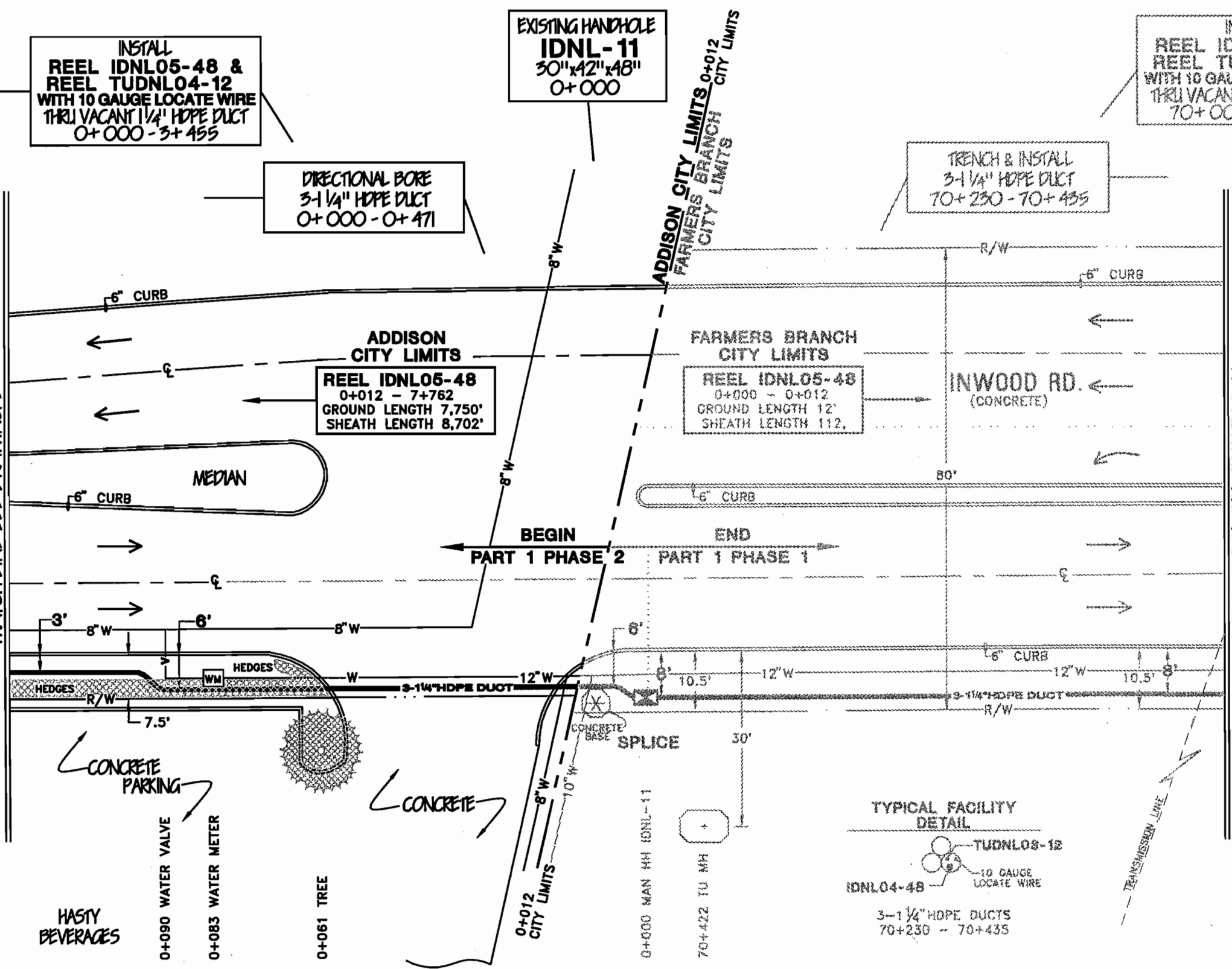
DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
0+000 - 0+471

TRENCH & INSTALL  
3-1/4" HDPE DUCT  
70+230 - 70+435

SEE  
IRVING - DALLAS NORTH LOOP  
PART 1 - PHASE 1  
DRAWING 146 OF 152  
FOR CONTINUATION  
(REELS IDNL04-48 & TUDNLO3-12)

MATCHLINE SEE DRAWING 5

MATCHLINE SEE DRAWING 4A



SAFETY FIRST!

LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
DIGITISS 1-800-344-8377

PROPRIETARY

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CONSTRUCTION ISSUE  
DALLAS COUNTY  
FARMERS BRANCH &  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLBB146	DWG. NO. 4B OF 107
DATE: 2 MAY 97	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2

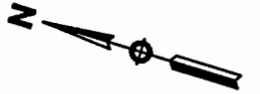


PLAN  
1"=20'

0+000 HH IDNL-11 - 0+471 HH IDNL-12 - 471'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

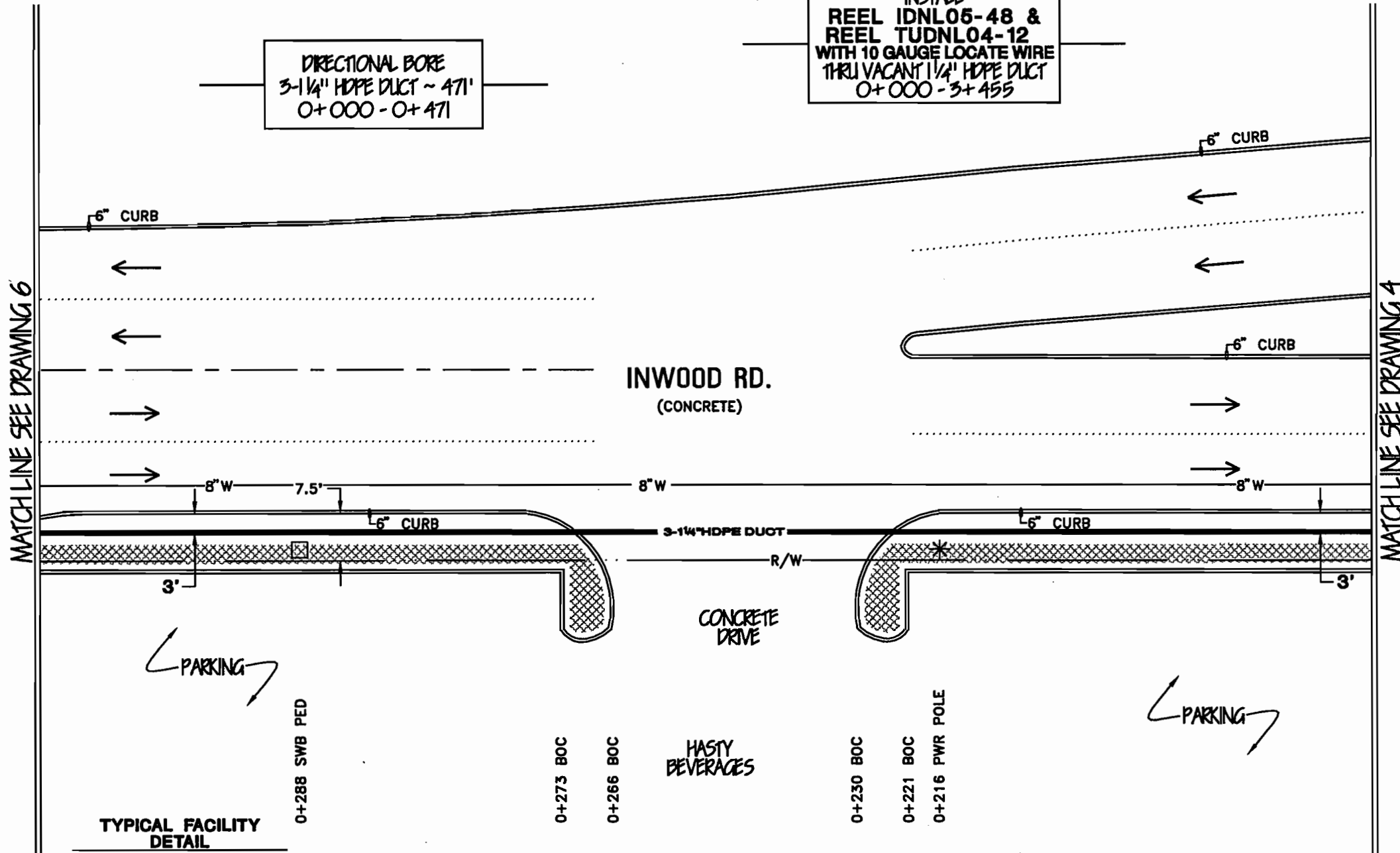
REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



DIRECTION OF ENGINEERING  
←

INSTALL  
REEL IDNL05-48 &  
REEL TUDNL04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

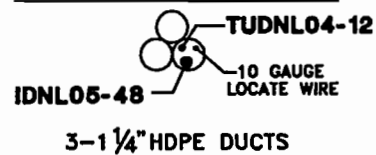
DIRECTIONAL BORE  
3-1/4" HDPE DUCT ~ 471'  
0+000 - 0+471



MATCH LINE SEE DRAWING 6

MATCH LINE SEE DRAWING 4

TYPICAL FACILITY  
DETAIL



LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
DIGITESS 1-800-344-8377



METRO ACCESS NETWORKS, INC.

PLAN  
1" = 20'

PROPRIETARY

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CONSTRUCTION ISSUE

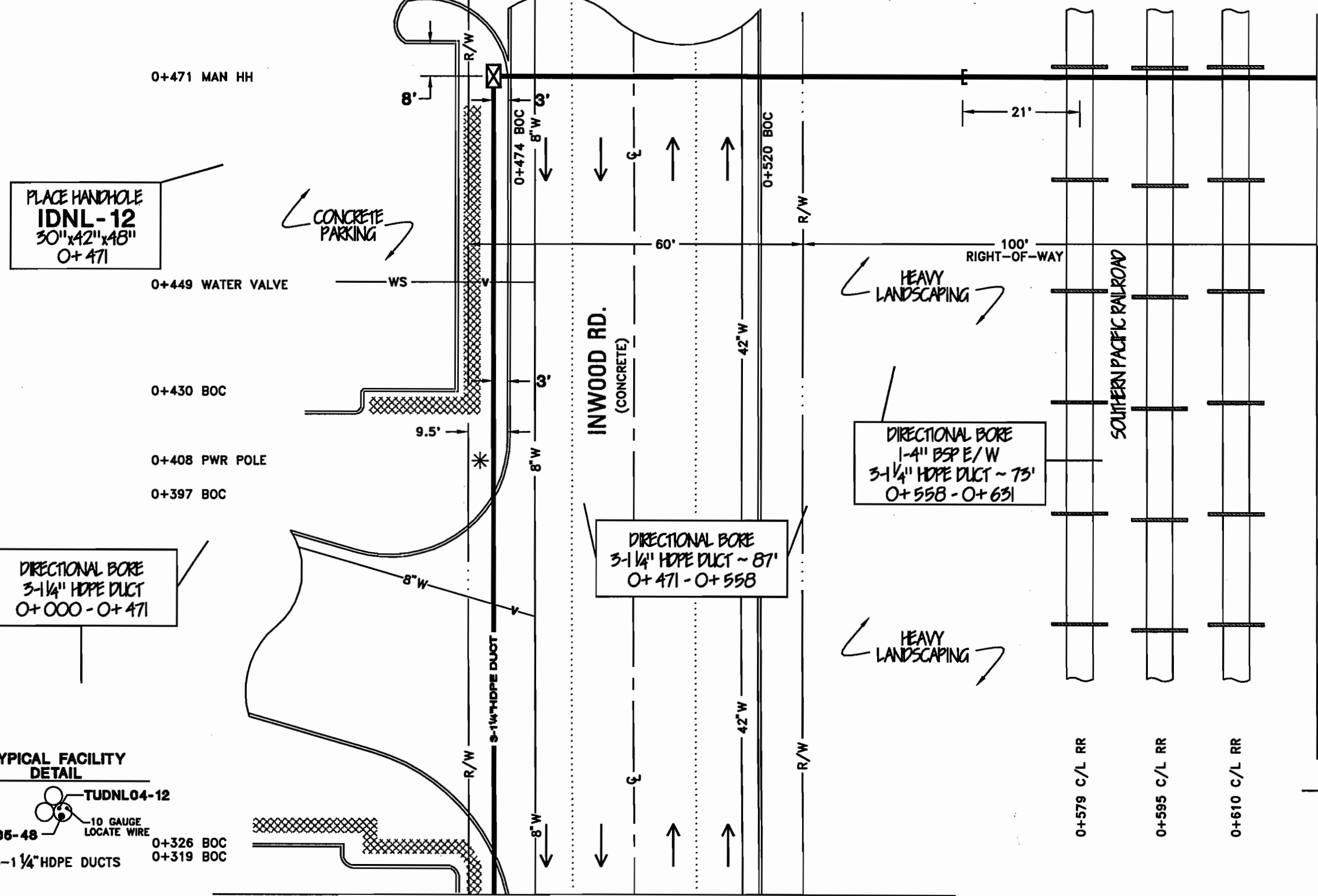
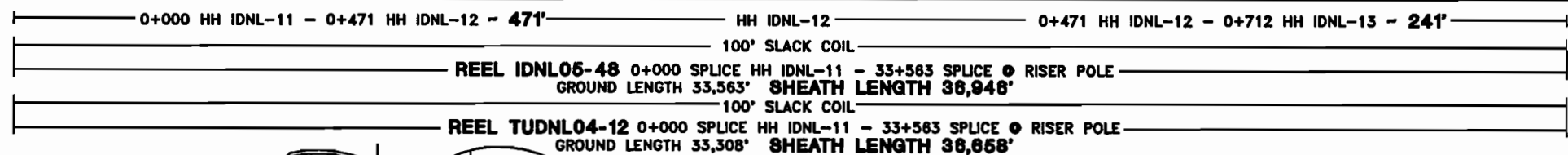
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1147	IRVING - DALLAS NORTH LOOP PART I - PHASE 2	DWG. NO. 5 OF 107
DATE: 2 MAY 97		

SAFETY FIRST!





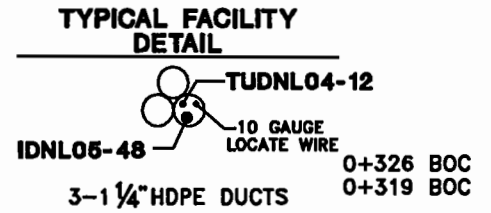
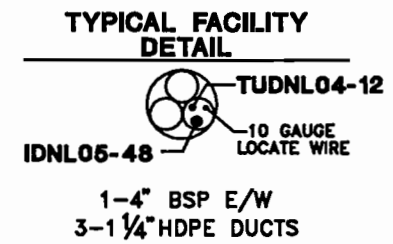
PLACE HANDHOLE  
IDNL-12  
30" x 42" x 48"  
0+471

DIRECTIONAL BORE  
1-4" BSP E/W  
3-1/4" HDPE DUCT ~ 73'  
0+558 - 0+631

DIRECTIONAL BORE  
3-1/4" HDPE DUCT ~ 87'  
0+471 - 0+558

DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
0+000 - 0+471

INSTALL  
REEL IDNL05-48 &  
REEL TUDN04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1/4" HDPE DUCT  
0+000 - 3+455



MATCH LINE SEE DRAWING 5

MATCH LINE SEE DRAWING 7



**METRO ACCESS NETWORKS, INC.**

LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
DIGITESS 1-800-344-8377

PLAN  
1" = 20'

**PROPRIETARY**

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**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1148	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 6 OF 107
DATE: 2 MAY 97		

**SAFETY FIRST!**

0+471 HH IDNL-12 - 0+712 HH IDNL-13 ~ 241'      HH IDNL-13      0+712 HH IDNL-13 - 1+465 HH IDNL-14 ~ 753'

100' SLACK COIL

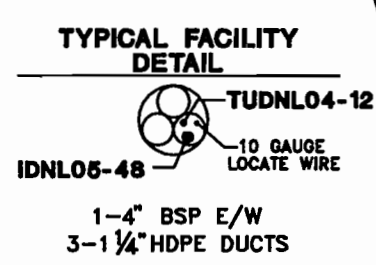
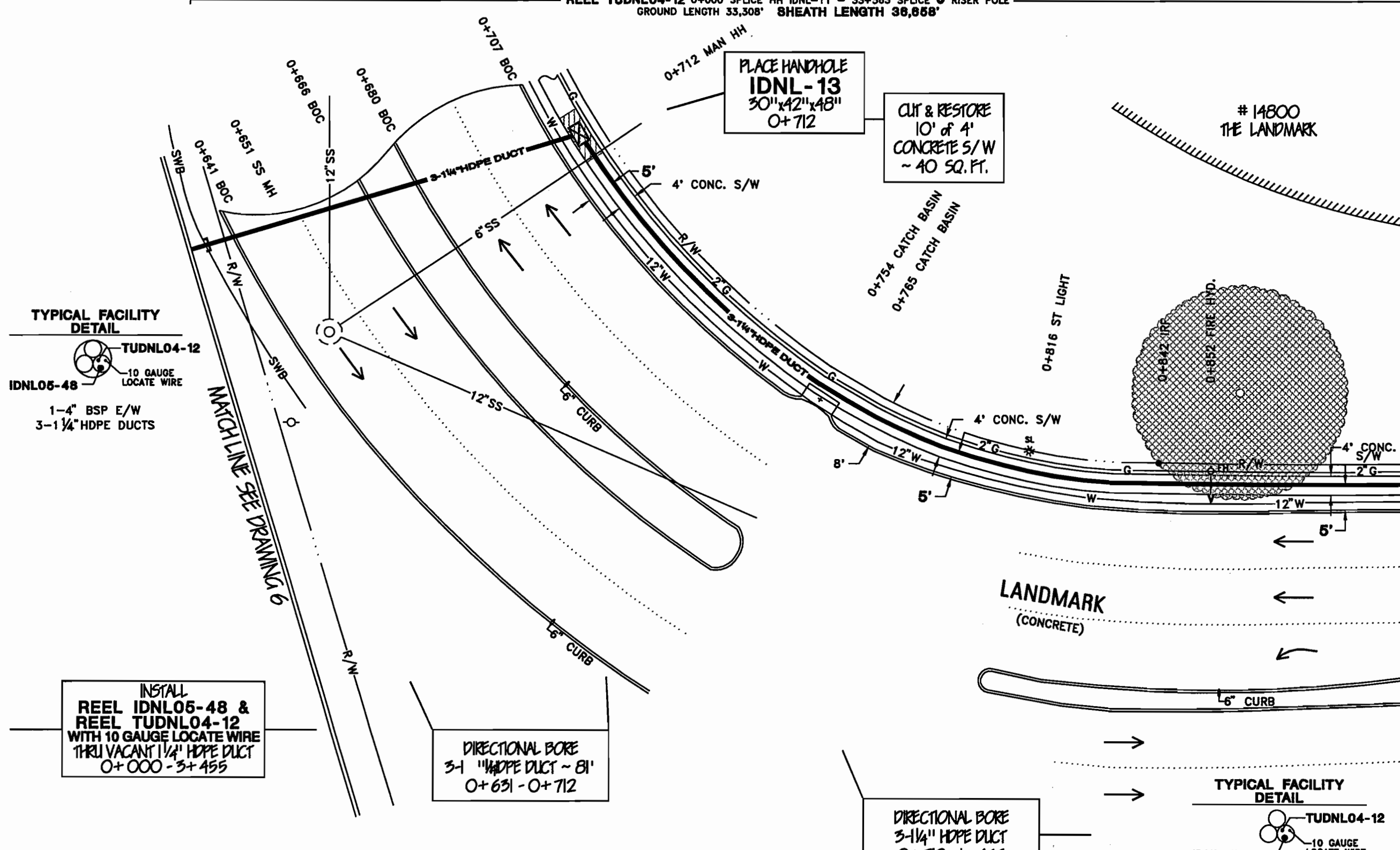
REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 38,948'

100' SLACK COIL

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



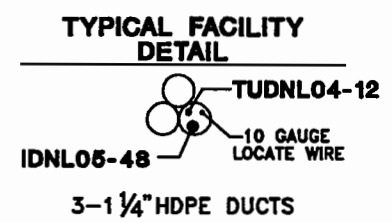
DIRECTION OF ENGINEERING →



INSTALL  
REEL IDNL05-48 &  
REEL TUDNLO4-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

DIRECTIONAL BORE  
3-1 1/4" HDPE DUCT ~ 81'  
0+631 - 0+712

DIRECTIONAL BORE  
3-1 1/4" HDPE DUCT  
0+712 - 1+465



MATCHLINE SEE DRAWING 8

**LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!**  
DIGITESS 1-800-344-8377



**METRO ACCESS NETWORKS, INC.**

PLAN  
1" = 20'

**PROPRIETARY**

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**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1149	IRVING - DALLAS NORTH LOOP PART I - PHASE 2	DWG. NO. 7 OF 107
DATE: 2 MAY 97		

**SAFETY FIRST!**

0+712 HH IDNL-13 - 1+465 HH IDNL-14 - 753'

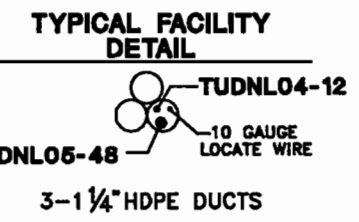
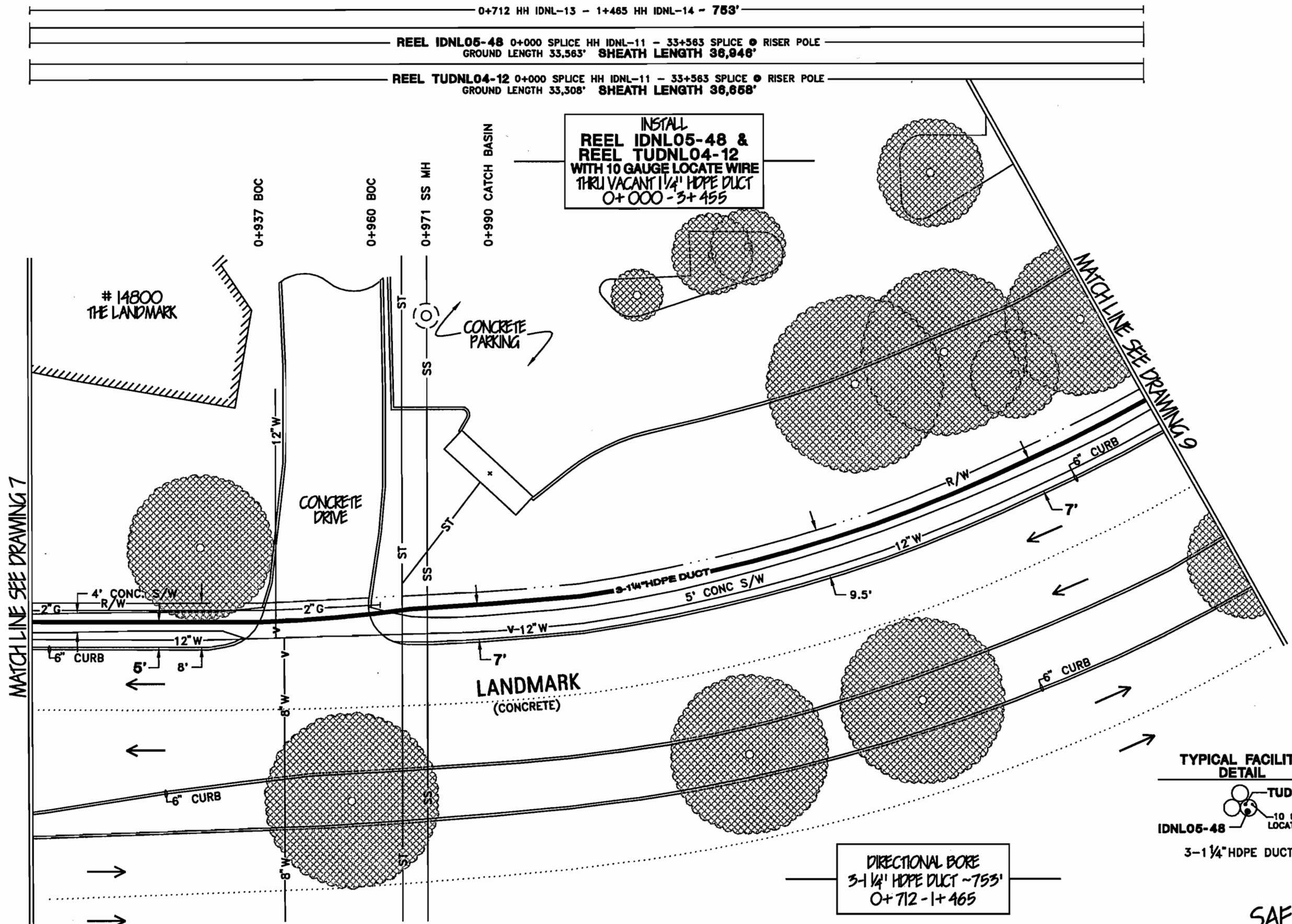
REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'

INSTALL  
REEL IDNL05-48 &  
REEL TUDNLO4-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455



DIRECTION OF  
ENGINEERING  
→



DIRECTIONAL BORE  
3-1 1/4" HDPE DUCT ~753'  
0+712 - 1+465

**SAFETY FIRST!**



**LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!**  
DIGITESS 1-800-344-8377

**PROPRIETARY**

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**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:  
DNLB1150  
DATE:  
2 MAY 97

IRVING - DALLAS NORTH LOOP  
PART I - PHASE 2

DWG. NO.  
8 OF 107

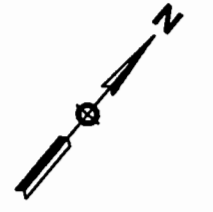
**METRO ACCESS NETWORKS, INC.**

PLAN  
1" = 20'

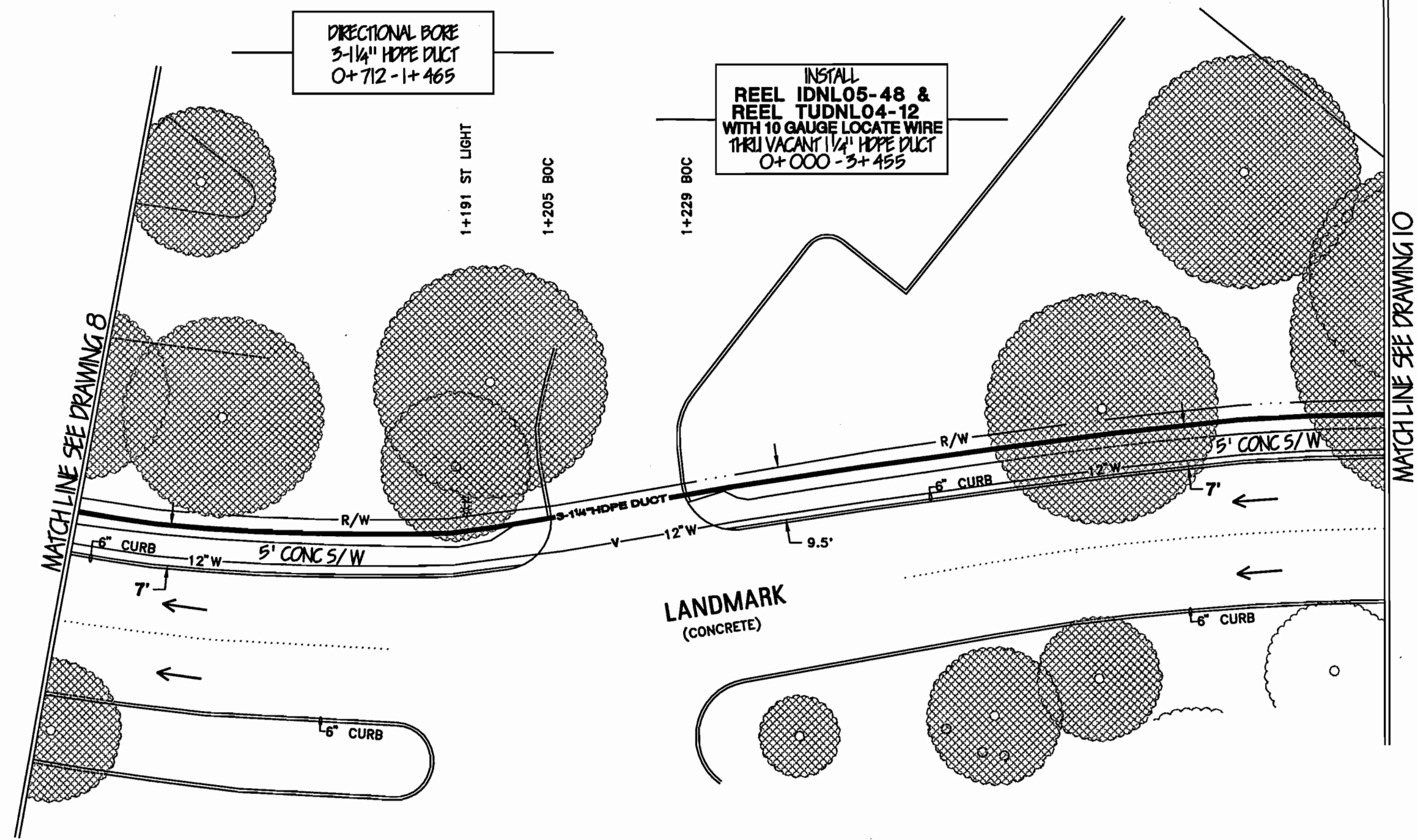
0+712 HH IDNL-13 - 1+465 HH IDNL-14 - 753'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,948'

REEL TUDN04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,868'



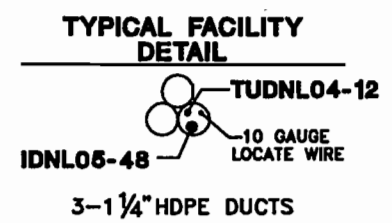
DIRECTION OF ENGINEERING  
→



MATCHLINE SEE DRAWING 8

MATCHLINE SEE DRAWING 10

LANDMARK  
(CONCRETE)



**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

**SAFETY FIRST!**



**METRO ACCESS NETWORKS, INC.**

**LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!**  
DIGITESS 1-800-344-8377

PLAN  
1"=20'

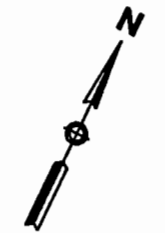
**PROPRIETARY**  
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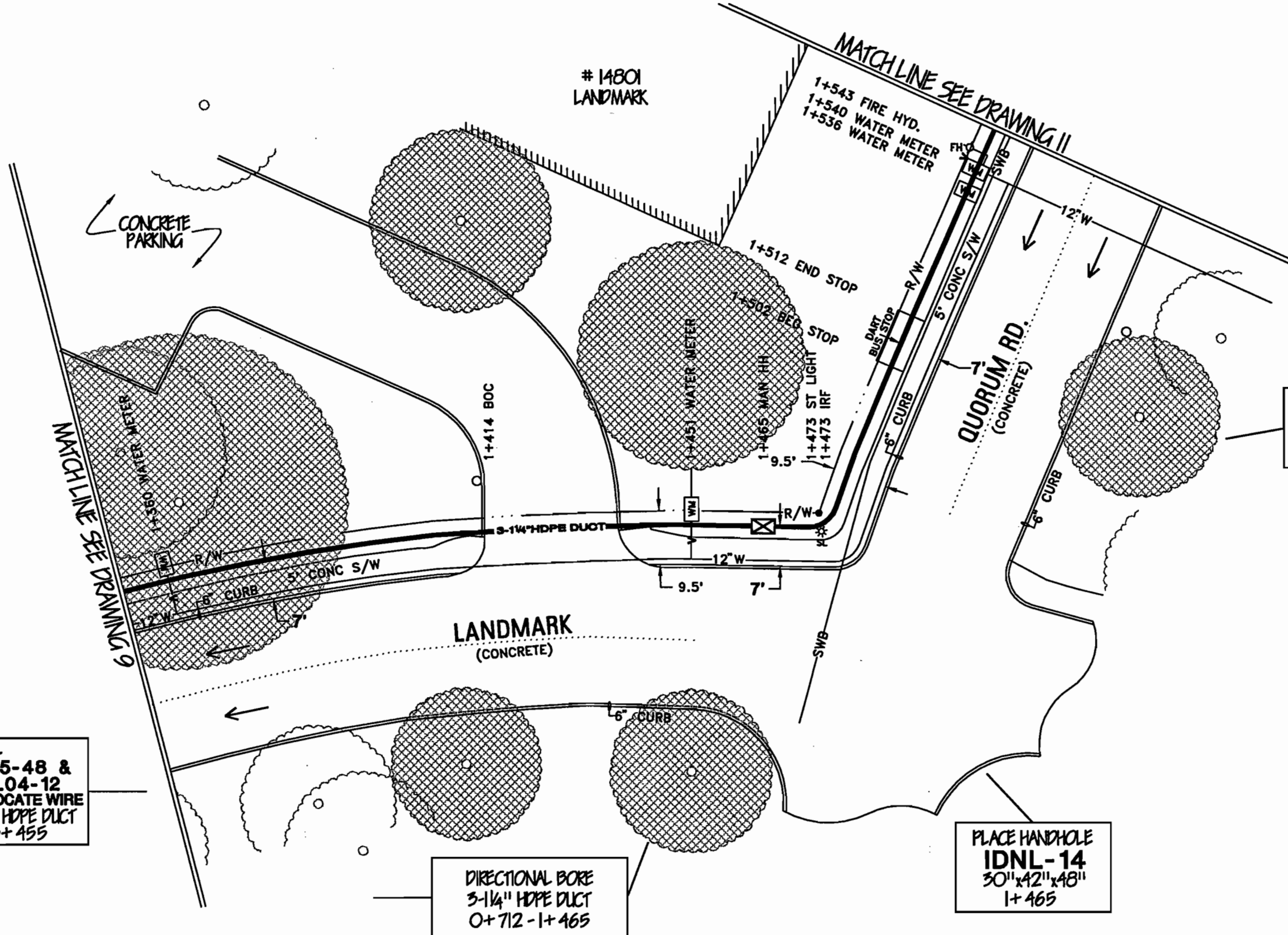
FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1151	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 9 OF 107
DATE: 2 MAY 97		

0+712 HH IDNL-13 - 1+465 HH IDNL-14 - 753'	HH IDNL-14	1+465 HH IDNL-14 - 2+025 HH IDNL-15 - 560'
100' SLACK COIL		
REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE		
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'		
100' SLACK COIL		
REEL TUDN04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE		
GROUND LENGTH 33,308' SHEATH LENGTH 36,858'		



DIRECTION OF ENGINEERING  
→

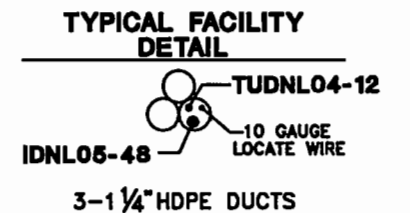


INSTALL  
REEL IDNL05-48 &  
REEL TUDN04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
0+712 - 1+465

PLACE HANDHOLE  
IDNL-14  
30" x 42" x 48"  
1+465

DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
1+465 - 2+025



SAFETY FIRST!



LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
DIGITESS 1-800-344-8377

METRO ACCESS NETWORKS, INC.

PLAN  
1" = 20'

PROPRIETARY

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CONSTRUCTION ISSUE  
DALLAS COUNTY  
ADDISON CITY LIMITS

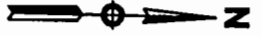
FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1152	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 10 OF 107
DATE: 2 MAY 97		

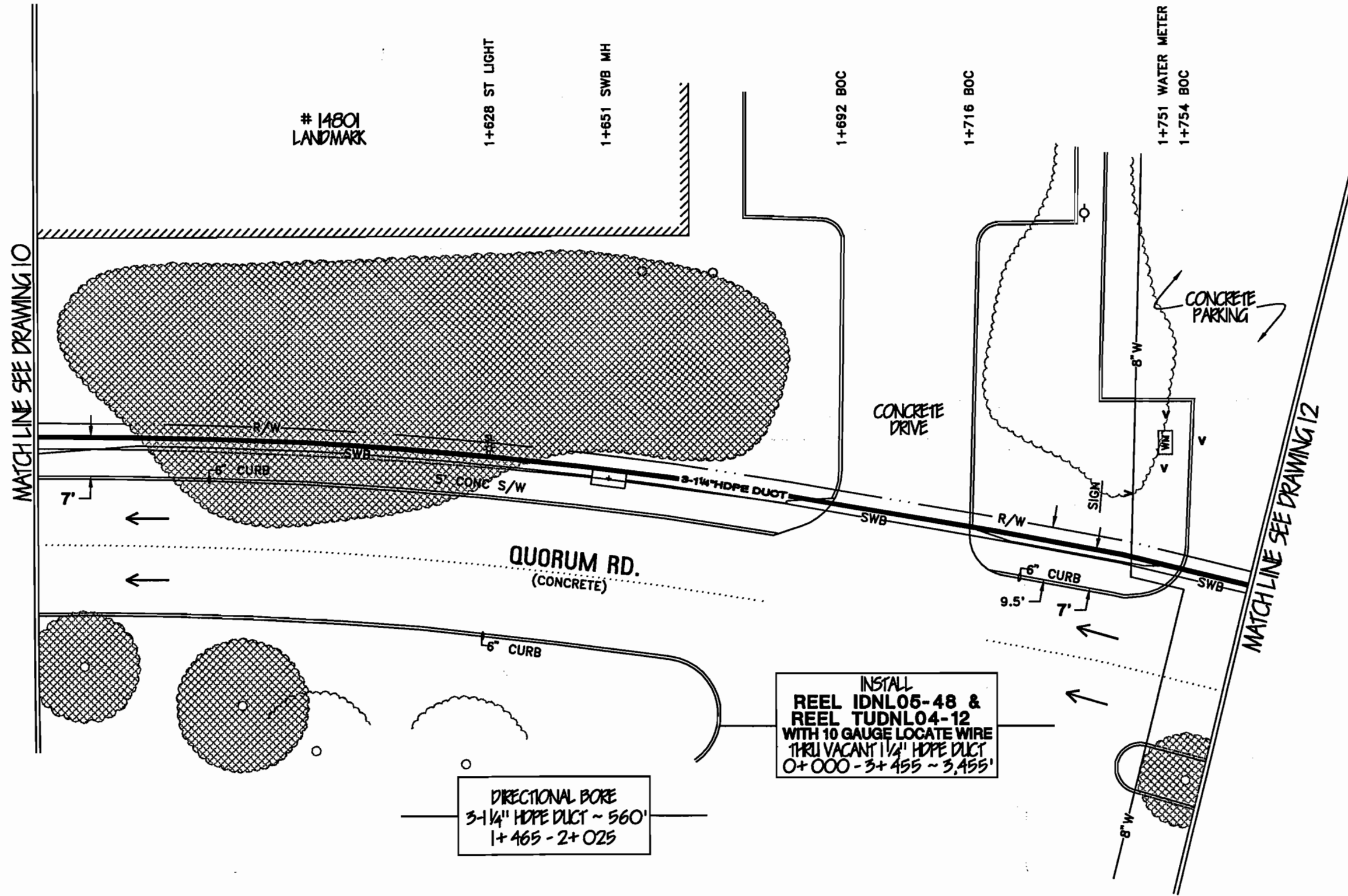
1+465 HH IDNL-14 - 2+025 HH IDNL-15 ~ 560'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'

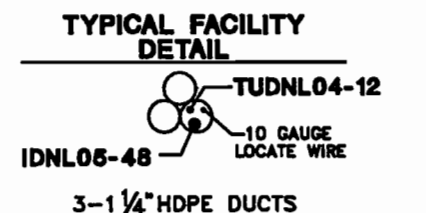


DIRECTION OF ENGINEERING  
→



MATCHLINE SEE DRAWING 10

MATCHLINE SEE DRAWING 12



INSTALL  
REEL IDNL05-48 &  
REEL TUDNL04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455 ~ 3,455'

DIRECTIONAL BORE  
3-1/4" HDPE DUCT ~ 560'  
1+465 - 2+025

SAFETY FIRST!



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**METRO ACCESS NETWORKS, INC.**

PLAN  
1"=20'

PROPRIETARY  
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CONSTRUCTION ISSUE  
DALLAS COUNTY  
ADDISON CITY LIMITS

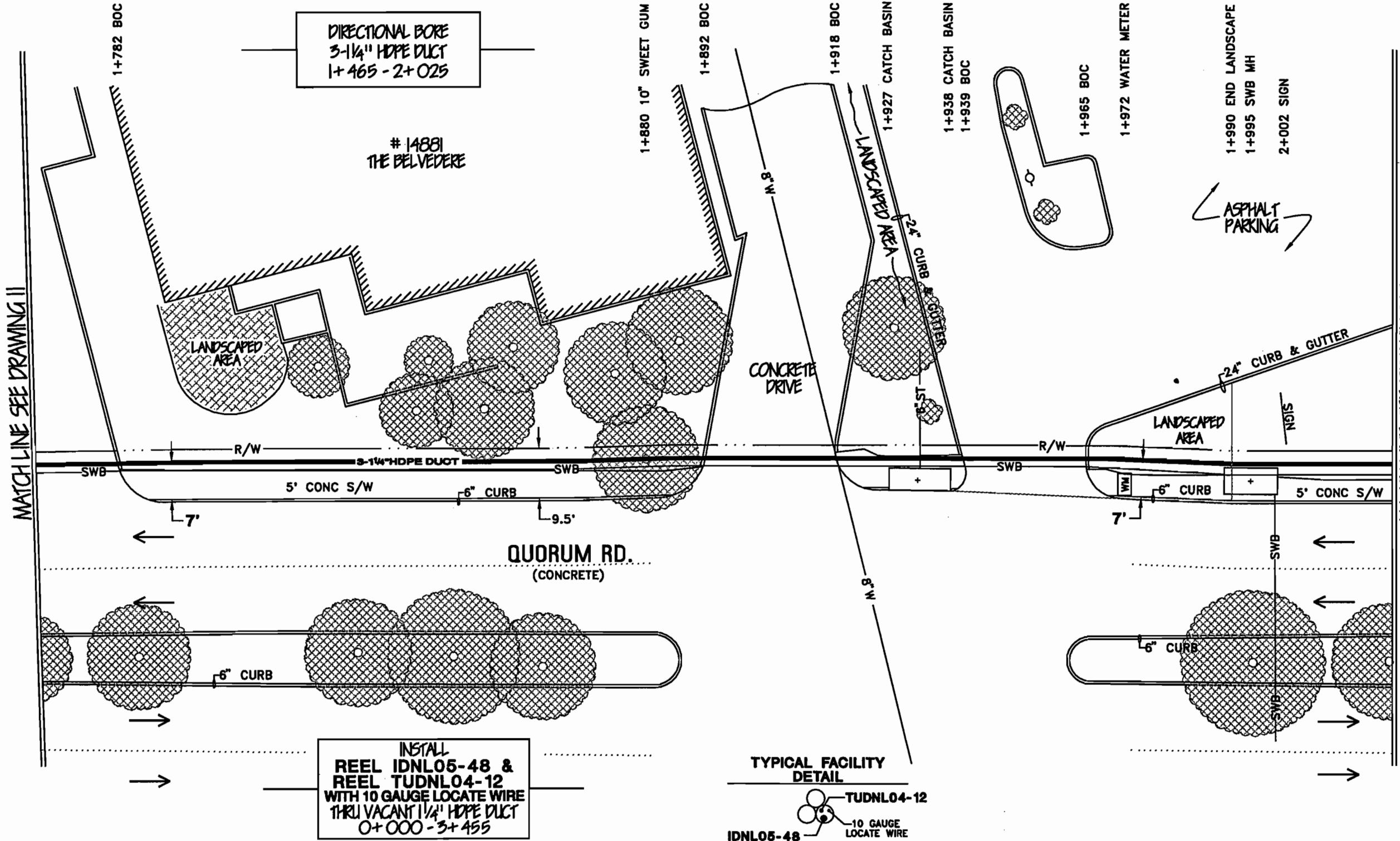
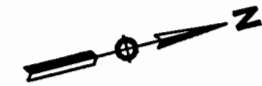
FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1153	IRVING - DALLAS NORTH LOOP PART I - PHASE 2	DWG. NO. 11 OF 107
DATE: 2 MAY 97		

1+465 HH IDNL-14 - 2+025 HH IDNL-15 - 560'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,858'

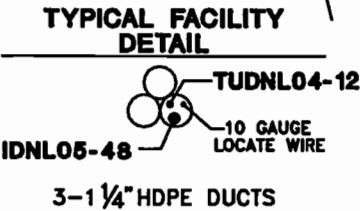


DIRECTION OF ENGINEERING  
→

DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
1+465 - 2+025

# 14881  
THE BELVEDERE

INSTALL  
REEL IDNL05-48 &  
REEL TUDNL04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455



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CONSTRUCTION ISSUE  
DALLAS COUNTY  
ADDISON CITY LIMITS

SAFETY FIRST!



METRO ACCESS NETWORKS, INC.

PLAN  
1"=20'

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1154	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 12 OF 107
DATE: 2 MAY 97		

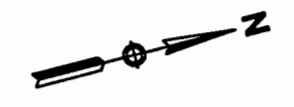
1+485 HH IDNL-14 - 2+025 HH IDNL-15 - 560'      HH IDNL-15      2+025 HH IDNL-15 - 2+610 HH IDNL-16 - 585'

100' SLACK COIL

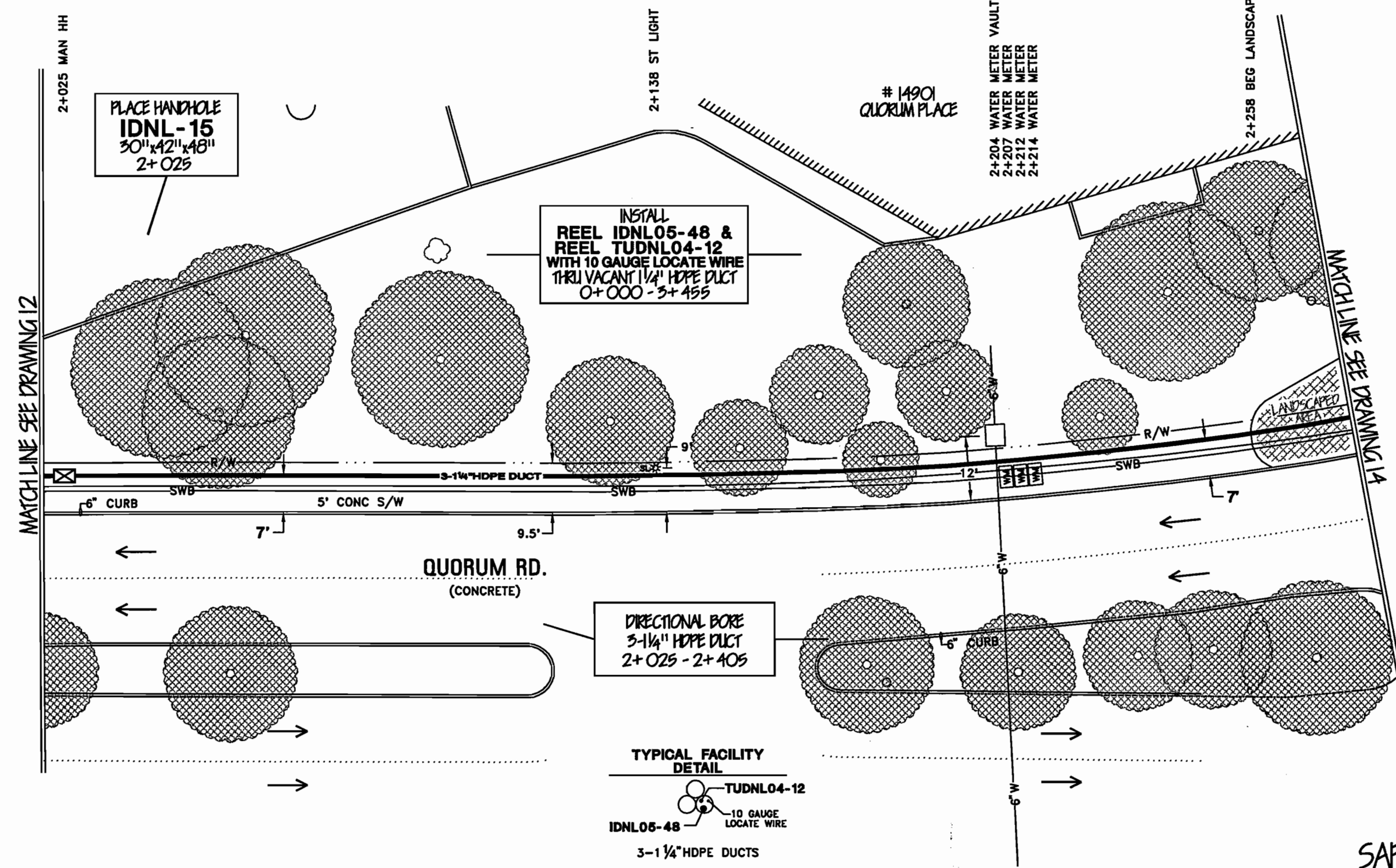
REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

100' SLACK COIL

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



DIRECTION OF ENGINEERING →



SAFETY FIRST!

**METRO ACCESS NETWORKS, INC.**

LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!

DIGRESS 1-800-344-8377

PLAN 1"=20'

**PROPRIETARY**

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**CONSTRUCTION ISSUE**

DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1155	DWG. NO. 13 OF 107
DATE: 2 MAY 97	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2



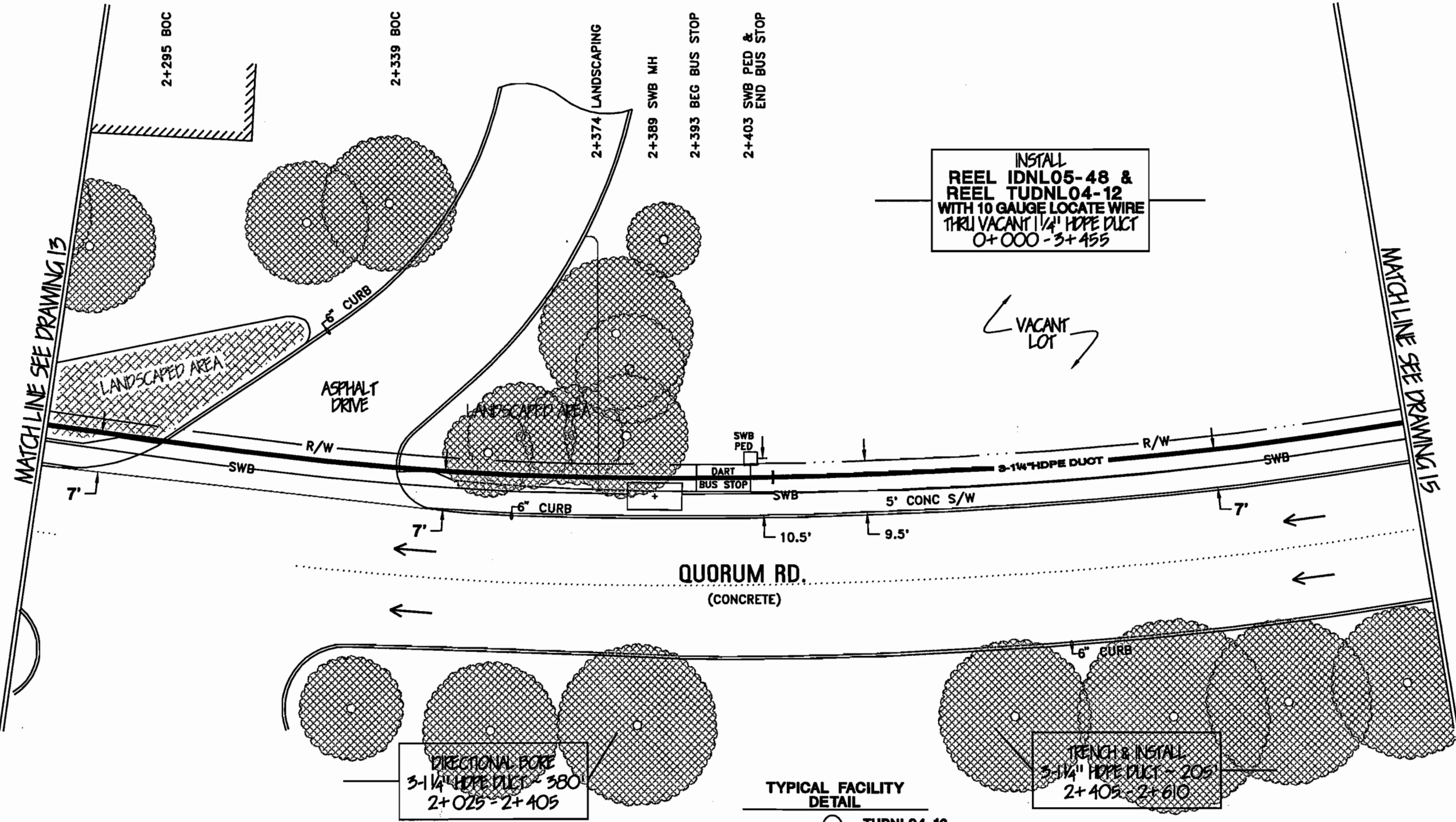
2+025 HH IDNL-15 - 2+610 HH IDNL-16 ~ 585'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 38,946'

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 38,668'



DIRECTION OF ENGINEERING  
→

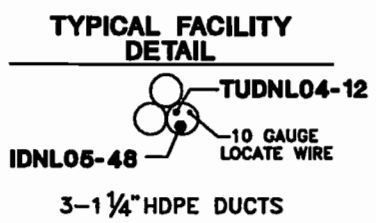


INSTALL  
REEL IDNL05-48 &  
REEL TUDNLO4-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1/4\"/>

VACANT LOT

DIRECTIONAL POLE  
3-1/4\"/>

TRENCH & INSTALL  
3-1/4\"/>



CONSTRUCTION ISSUE  
DALLAS COUNTY  
ADDISON CITY LIMITS

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METRO ACCESS NETWORKS, INC.

PLAN  
1"=20'

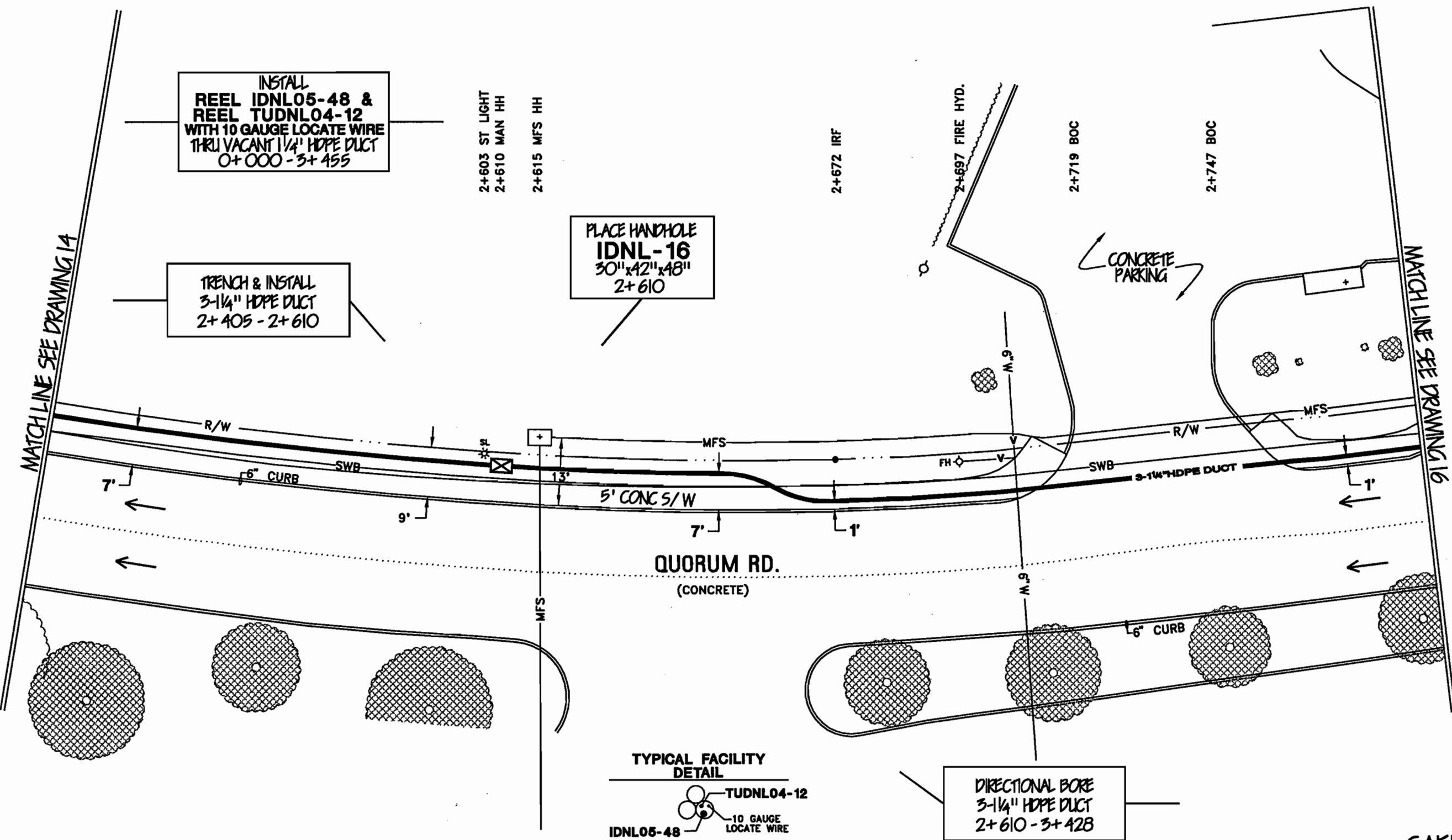
FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1156	IRVING - DALLAS NORTH LOOP PART 1 - PHASE 2	DWG. NO. 14 OF 107
DATE: 2 MAY 97		

2+025 HH IDNL-15 - 2+610 HH IDNL-16 - 585'	HH IDNL-16	2+610 HH IDNL-16 - 3+428 HH IDNL-17 - 818'
100' SLACK COIL		
REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE		
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'		
100' SLACK COIL		
REEL TUDN04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE		
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'		



DIRECTION OF ENGINEERING  
→



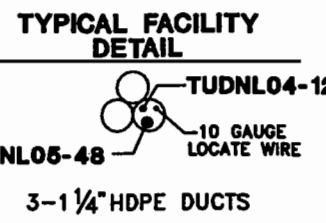
INSTALL  
REEL IDNL05-48 &  
REEL TUDN04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1/4" HDPE DUCT  
0+000 - 3+455

2+603 ST LIGHT  
2+610 MAN HH  
2+615 MFS HH

PLACE HANDHOLE  
IDNL-16  
30" x 42" x 48"  
2+610

TRENCH & INSTALL  
3-1/4" HDPE DUCT  
2+405 - 2+610

CONCRETE  
PARKING



DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
2+610 - 3+428

SAFETY FIRST!



LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
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METRO ACCESS NETWORKS, INC.

PLAN  
1"=20'

PROPRIETARY

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CONSTRUCTION ISSUE  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1157
DATE: 2 MAY 97

IRVING - DALLAS NORTH LOOP  
PART I - PHASE 2

DWG. NO. 15 OF 107
-----------------------

2+610 HH IDNL-16 - 3+428 HH IDNL-17 - 818'

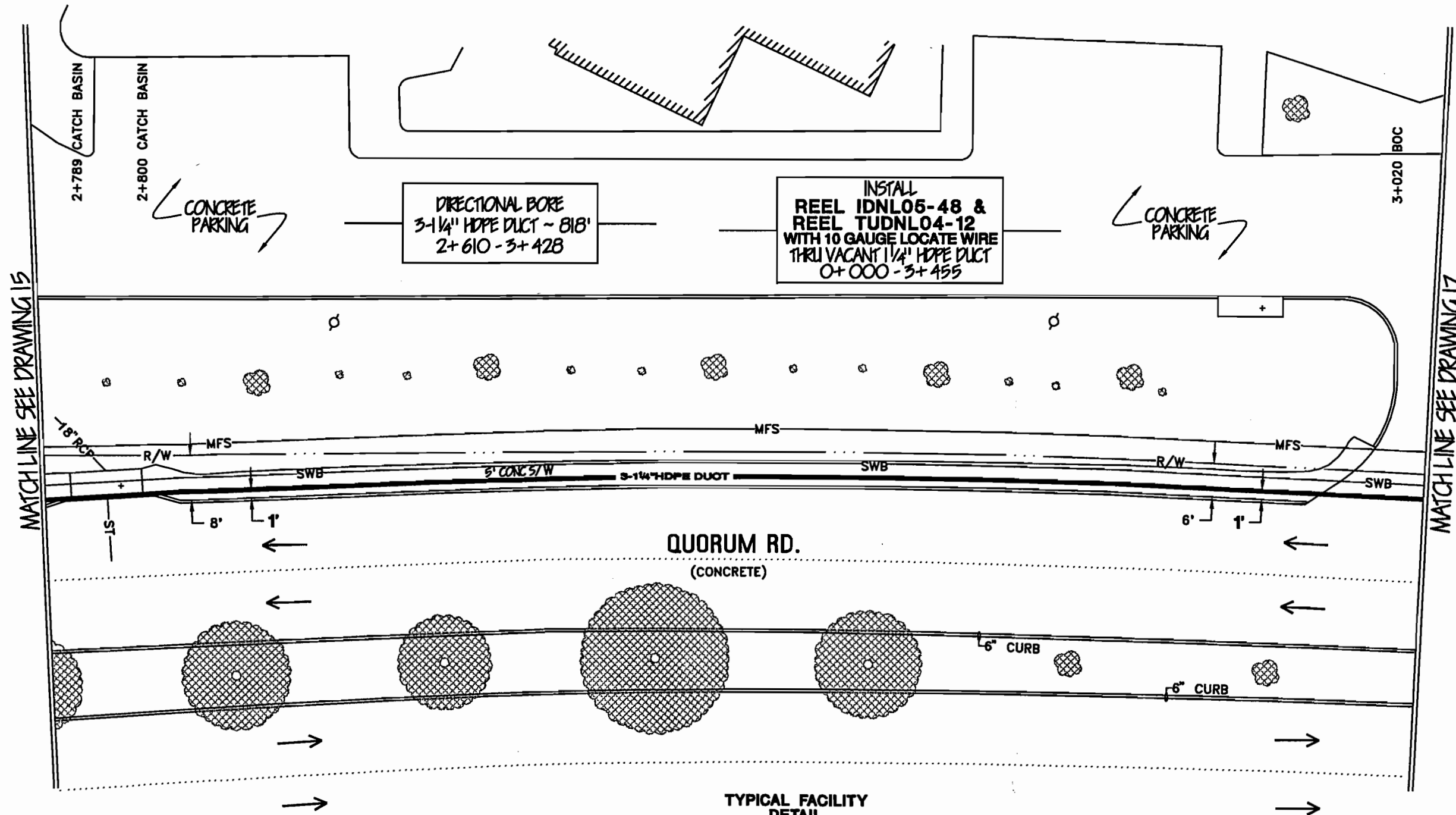
REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 38,948'

REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 38,658'

# 14975  
RESIDENCE INN



DIRECTION OF  
ENGINEERING  
→

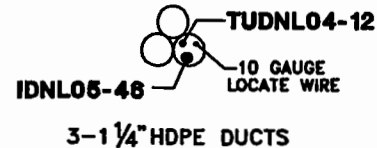


MATCH LINE SEE DRAWING 15

MATCH LINE SEE DRAWING 17

QUORUM RD.  
(CONCRETE)

TYPICAL FACILITY  
DETAIL



SAFETY FIRST!



**METRO ACCESS NETWORKS, INC.**

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PLAN  
1"=20'

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**CONSTRUCTION ISSUE**

DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:	DNLB1158
DATE:	2 MAY 97

IRVING - DALLAS NORTH LOOP  
PART I - PHASE 2

DWG. NO.  
16 OF 107

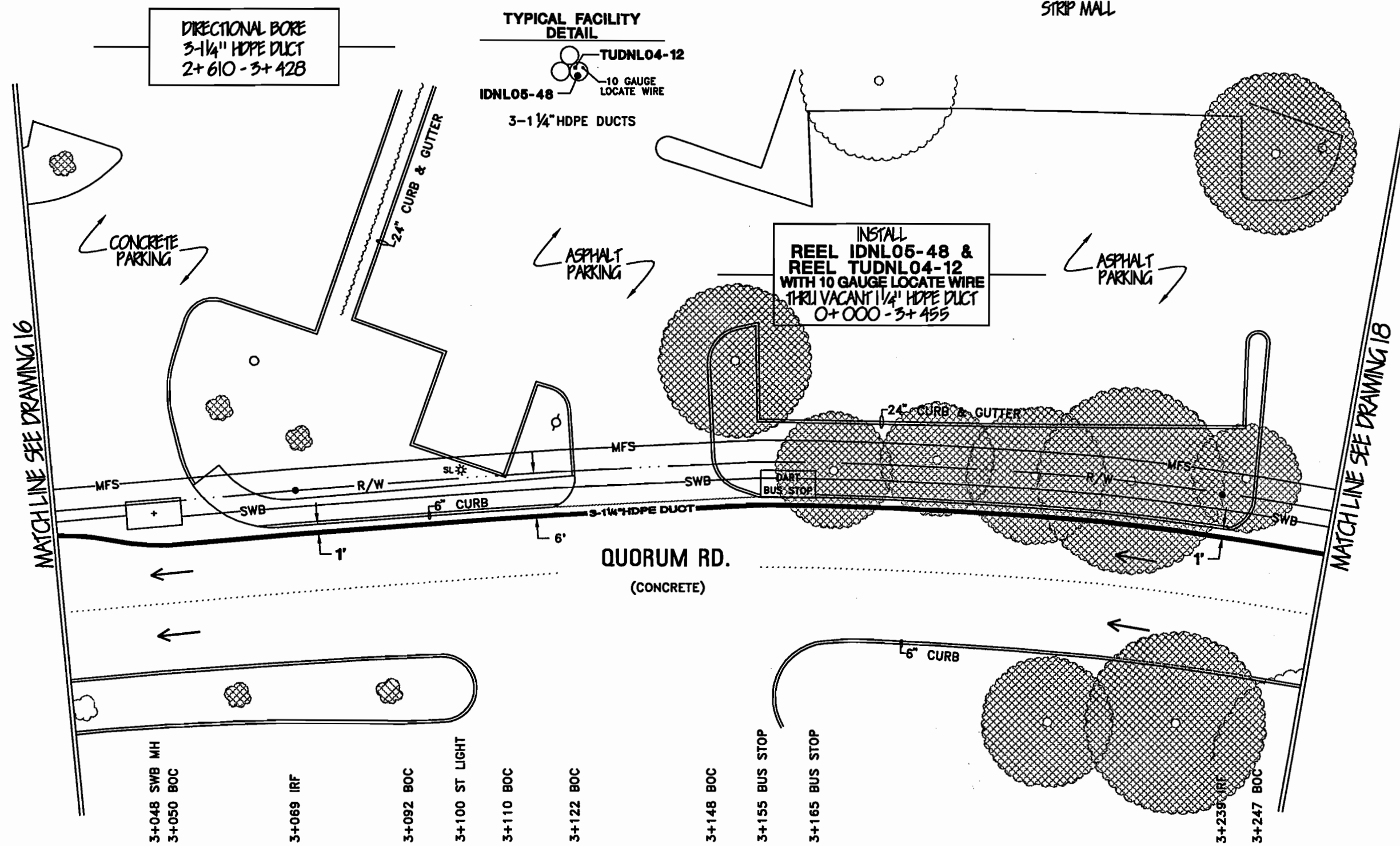
2+610 HH IDNL-16 - 3+428 HH IDNL-17 ~ 818'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 38,948'

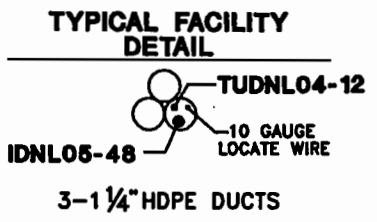
REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 38,658'



DIRECTION OF ENGINEERING  
→



DIRECTIONAL BORE  
3-1/4" HDPE DUCT  
2+610 - 3+428



INSTALL  
REEL IDNL05-48 &  
REEL TUDNL04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

MATCHLINE SEE DRAWING 16

MATCHLINE SEE DRAWING 18

3+04B SWB MH  
3+050 BOC

3+069 IRF

3+092 BOC

3+100 ST LIGHT

3+110 BOC

3+122 BOC

3+148 BOC

3+155 BUS STOP

3+165 BUS STOP

3+239 IRF

3+247 BOC



LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
DIGITISS 1-800-344-8377

PROPRIETARY

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CONSTRUCTION ISSUE

DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:	DNLB1159
DATE:	2 MAY 97

IRVING - DALLAS NORTH LOOP  
PART I - PHASE 2

DWG. NO.	17 OF 107
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SAFETY FIRST!

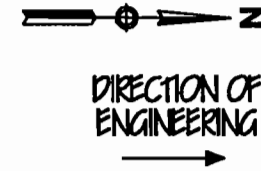
2+610 HH IDNL-16 - 3+428 HH IDNL-17 ~ 818'      HH IDNL-17      3+428 HH IDNL-17 - 3+455 RISER POLE ~ 27'      RISER POLE

100' SLACK COIL

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

100' SLACK COIL

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



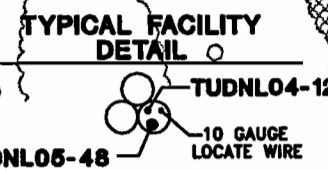
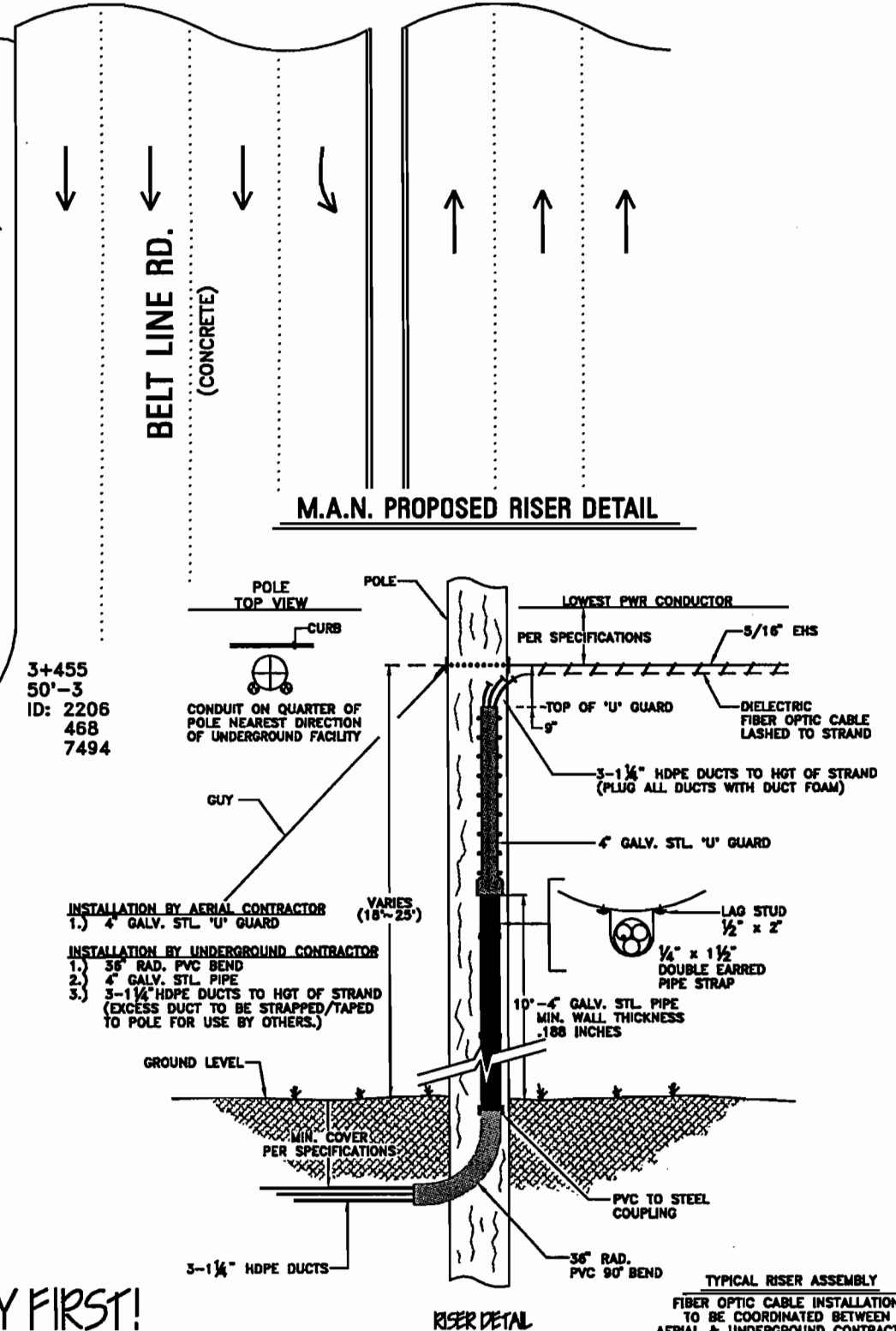
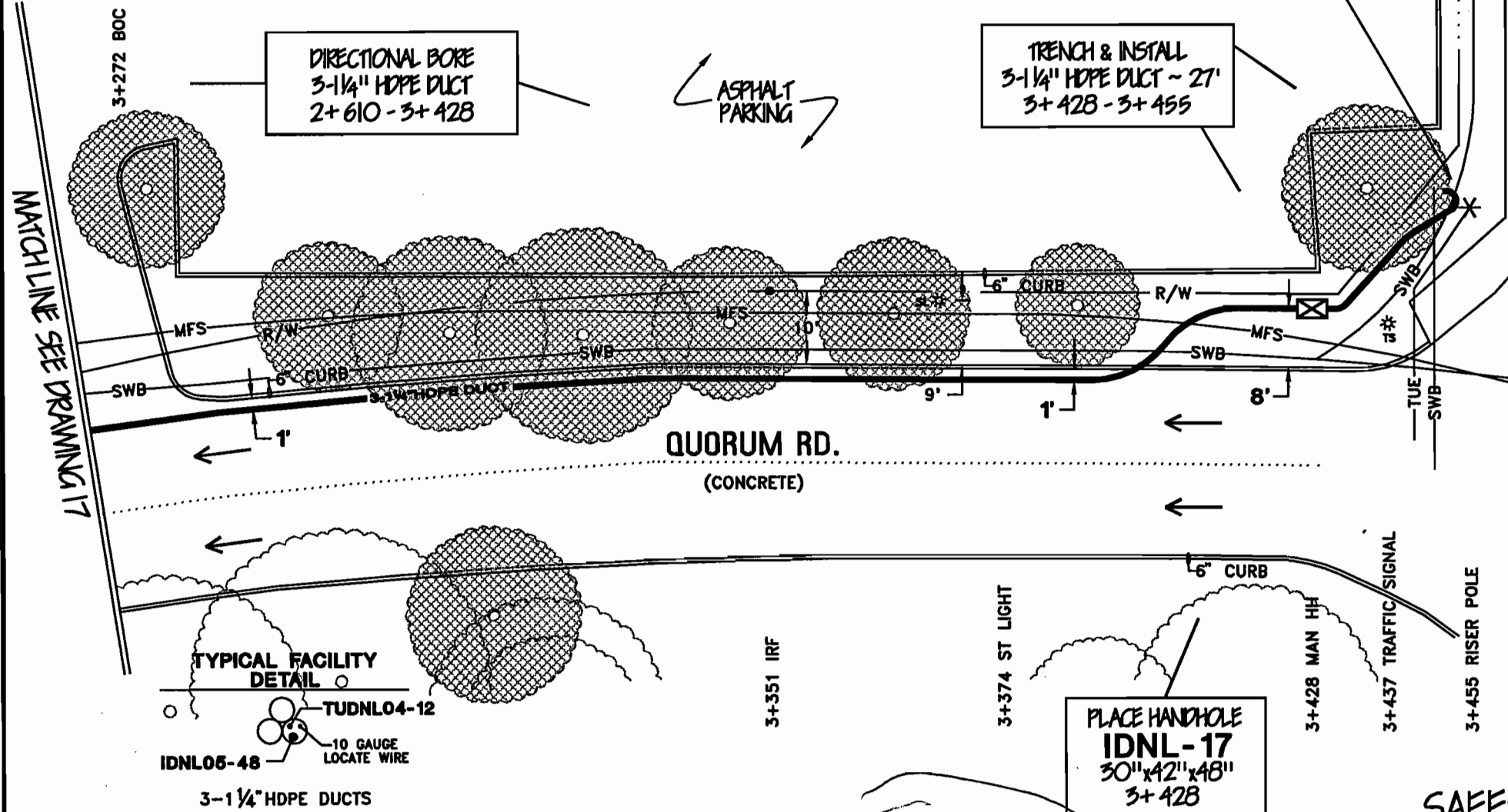
INSTALL  
REEL IDNL05-48 &  
REEL TUDNLO4-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1 1/4" HDPE DUCT  
0+000 - 3+455

SEE DRAWING  
19 OF 107  
FOR CONTINUATION  
(AERIAL SECTION)

DIRECTIONAL BORE  
3-1 1/4" HDPE DUCT  
2+610 - 3+428

TRENCH & INSTALL  
3-1 1/4" HDPE DUCT ~ 27'  
3+428 - 3+455

M.A.N. PROPOSED RISER DETAIL



PLACE HANDHOLE  
IDNL-17  
30" x 42" x 48"  
3+428

**SAFETY FIRST!**

**LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!**  
DIGITISS 1-800-344-8377

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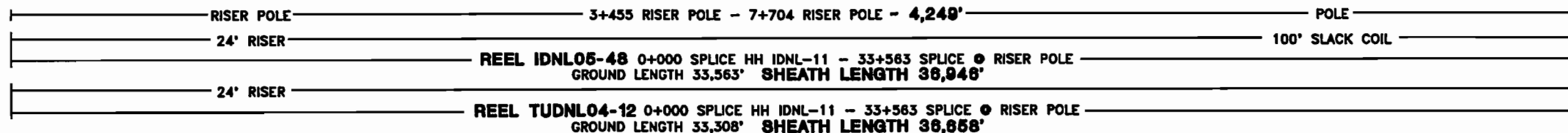
**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLB1160	IRVING - DALLAS NORTH LOOP PART I - PHASE 2	DWG. NO. 18 OF 107
DATE: 2 MAY 97		



PLAN  
11"-20"



4+364  
O RAISE TCI-C/F 9" [27'9"]

3+846  
O RAISE TCI-C/F 7" [26'6"]

4+154  
O RAISE TCI-C/F 51" [26'4"]

INSTALL  
1.5/16" EHS STRAND & LASH  
REEL IDNLO5-48 &  
REEL TUDNLO4-12  
3+455-7+704

RS  
TU-N 29'10" -CH-  
TCI-C/F 25'11" ↑

RS  
TU-N 31'0"  
TCI-C/F 25'5"  
FS  
TU-TOC 28'1" -CH-

RS  
TU-N 31'7"  
TCI-C/F 22'1" ↑  
FS  
TU-TOC 29'8" -CH-

RS  
TU-N 31'1" -CH-  
TCI-C/F 27'0" ↑

3+846  
POA 52"  
BELOW NEUT  
[25'6"] RS/RL

3+967  
POA 52"  
BELOW TU-TOC  
[23'9"] RS

MATCHLINE SEE DRAWING NO. 20

4+364  
POA 52"  
BELOW NEUT  
[26'9"] RS

4+296  
O RAISE TCI-C/F 4" [24'10"]

RS  
TU-N 30'0"  
FS  
TCI-C/F 24'6" ↑  
LL  
TU-WHD 28'2" -CH-

4+296  
POA 52"  
BELOW TU-WHD  
[23'10"] RS

4+263  
POA 52"  
BELOW NEUT  
[23'5"] LL

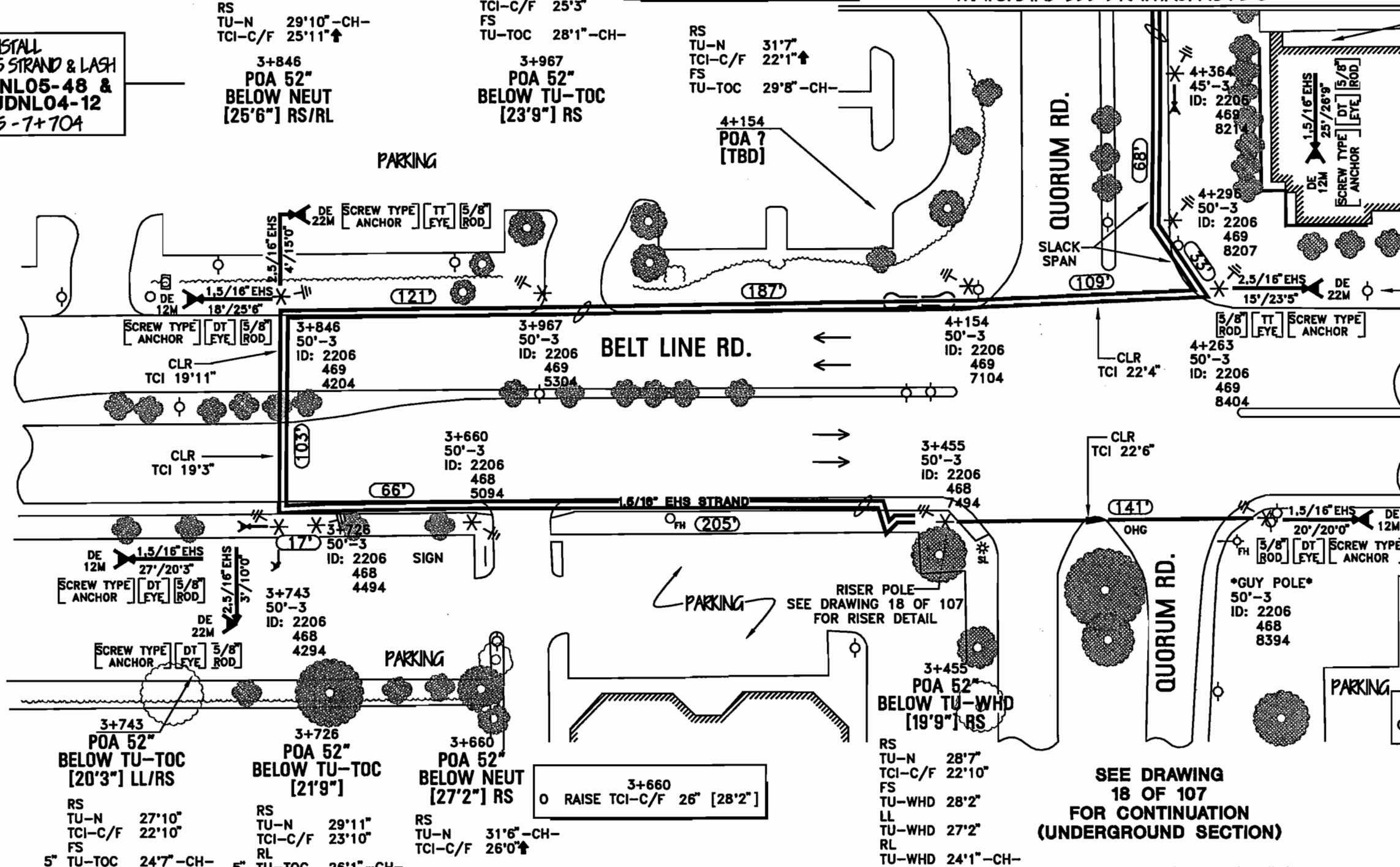
RS  
TU-N 27'9" -CH-  
FS  
TCI-C/F 23'8" ↑  
RL  
TCI-C/F 23'8" ↑

4+263  
O RAISE TCI-C/F 9" [24'5"]

\*GUY POLE\*  
POA 52"  
BELOW TU-TOC  
[20'0"] RL

RS  
TCI-C/F 22'3"  
FS  
TU-N 25'5"  
LL  
TU-TOC 23'0" -CH- ↑

\*GUY POLE\*  
O EXTEND TU-TOC 16" [24'4"]



3+743  
POA 52"  
BELOW TU-TOC  
[20'3"] LL/RS

RS  
TU-N 27'10"  
TCI-C/F 22'10"  
FS  
5" TU-TOC 24'7" -CH-

3+726  
POA 52"  
BELOW TU-TOC  
[21'9"]

RS  
TU-N 29'11"  
TCI-C/F 23'10"  
RL  
5" TU-TOC 26'1" -CH-

3+660  
POA 52"  
BELOW NEUT  
[27'2"] RS

RS  
TU-N 31'6" -CH-  
TCI-C/F 26'0" ↑

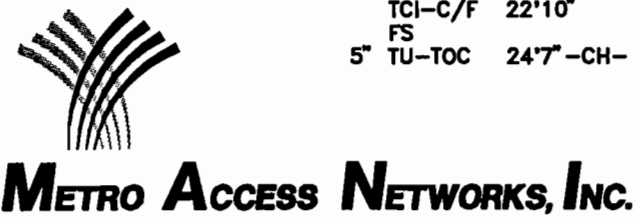
3+660  
O RAISE TCI-C/F 26" [28'2"]

3+455  
POA 52"  
BELOW TU-WHD  
[19'9"] RS

RS  
TU-N 28'7"  
TCI-C/F 22'10"  
FS  
TU-WHD 28'2"  
LL  
TU-WHD 27'2"  
RL  
TU-WHD 24'1" -CH-

SEE DRAWING  
18 OF 107  
FOR CONTINUATION  
(UNDERGROUND SECTION)

SAFETY FIRST!



PLAN  
1"=50'

PROPRIETARY  
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CONSTRUCTION ISSUE  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:  
DNLA1162  
REVISED DATE:  
5 MAY 97

IRVING - DALLAS NORTH LOOP  
PART I - PHASE 2

DWG. NO.  
19 OF 107

3+455 RISER POLE - 7+704 RISER POLE ~ 4,248'

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,948'

REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



4+481  
O RAISE TCI-F 10" [24'7"]

4+647  
O RAISE TCI-F 25" [27'4"]

RS  
TU-N 27'11"-CH-  
TCI-F 23'9"↑

RS  
TCI-F 25'3"↑  
RL  
TU-N 30'8"-CH-

RS  
TU-N 27'4"  
TCI-F 21'1"  
FS  
3" TU-TOC 24'8"  
LL  
5" TU-TOC 24'0"-CH-

4+481  
POA 52"  
BELOW NEUT  
[23'7"] RS

4+647  
POA 52"  
BELOW NEUT  
[26'4"] RS

INSTALL  
1.5/16" EHS STRAND & LASH  
REEL IDNL05-48 &  
REEL TUDNL04-12  
3+455 - 7+704

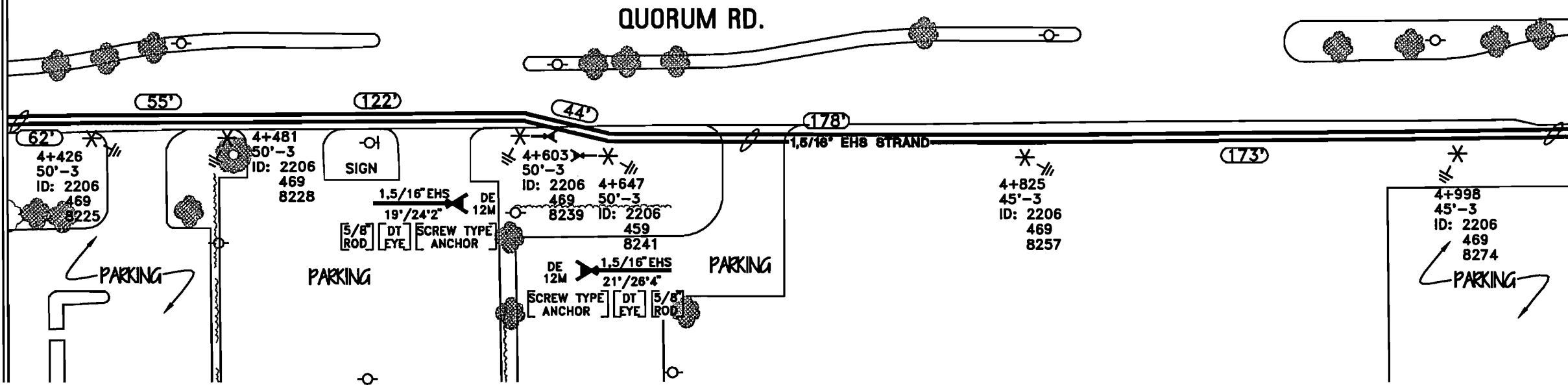
4+998  
POA 52"  
BELOW TU-TOC  
[19'8"] RS

DIRECTION OF  
ENGINEERING  
→

MATCHLINE SEE DRAWING NO. 19

MATCHLINE SEE DRAWING NO. 21

QUORUM RD.



4+426  
POA 52"  
BELOW NEUT  
[24'6"] RS

4+603  
POA 52"  
BELOW NEUT  
[24'2"] FS

4+825  
POA 52"  
BELOW NEUT  
[24'6"] RS

RS  
TU-N 28'10"-CH-  
TCI-F 24'10"↑

FS  
TU-N 28'6"-CH-  
TCI-F 24'4"↑

RS  
TU-N 28'10"-CH-  
TCI-F 24'5"↑  
RL  
TU-ABS

4+426  
O RAISE TCI-F 8" [25'6"]

4+603  
O RAISE TCI-F 10" [25'2"]

4+825  
O RAISE TCI-F 13" [25'6"]

SAFETY FIRST!



METRO ACCESS NETWORKS, INC.

PLAN  
1"=50'

PROPRIETARY

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CONSTRUCTION ISSUE

DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:  
DNLA1163  
DATE:  
2 MAY 97

IRVING - DALLAS NORTH LOOP  
PART I - PHASE 2

DWG. NO.  
20 OF 107

3+455 RISER POLE - 7+704 RISER POLE - 4,249' POLE  
 REEL IDNLO5-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
 GROUND LENGTH 33,563' SHEATH LENGTH 36,946'  
 REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
 GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



INSTALL  
 1.5/16" EHS STRAND & LASH  
 REEL IDNLO5-48 &  
 REEL TUDNLO4-12  
 3+455 - 7+704 - 4,249'

RS  
 TU-N 26'8"  
 TCI-F 21'10"  
 LL  
 TU-TOC 23'4"-CH-

5+658  
 O RAISE TCI-G/M 19" [21'7"]

DIRECTION OF  
 ENGINEERING  
 →

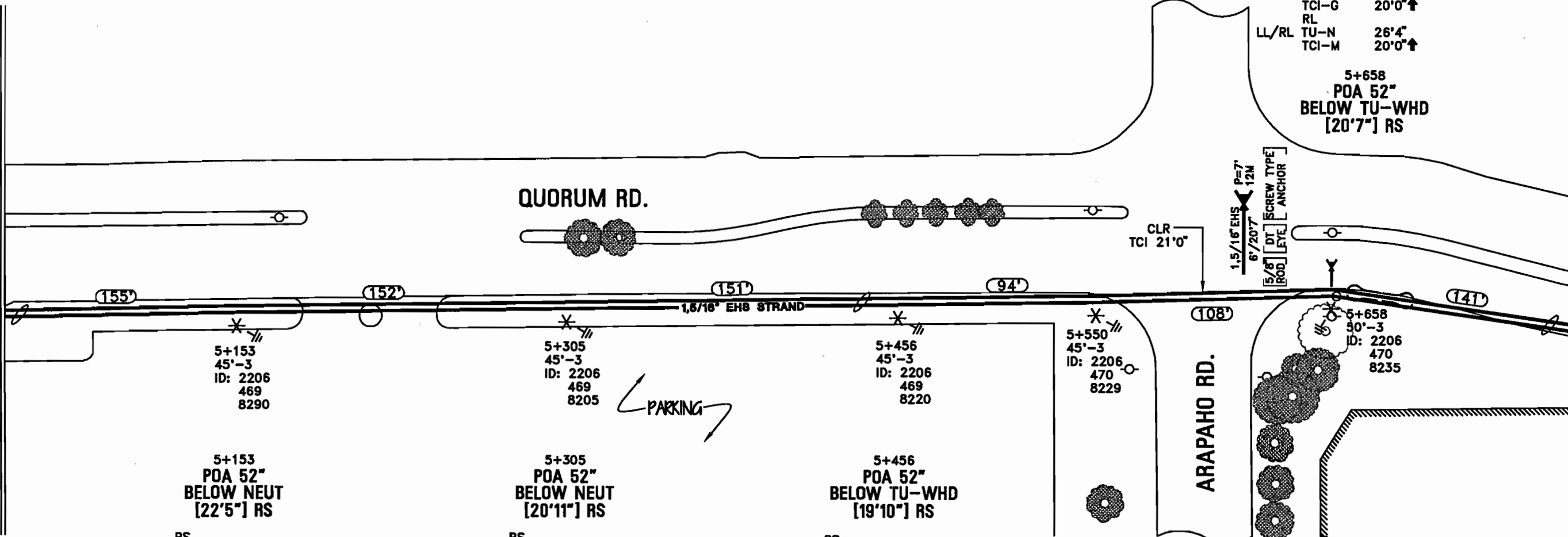
5+550  
 POA 52"  
 BELOW TU-TOC  
 [19'0"] RS

RS  
 TU-WHD 24'11"-CH-  
 LL  
 TCI-G 20'0"↑  
 RL  
 TU-N 26'4"  
 TCI-M 20'0"↑  
 LL/RL

5+658  
 POA 52"  
 BELOW TU-WHD  
 [20'7"] RS

MATCHLINE SEE DRAWING NO. 20

MATCHLINE SEE DRAWING NO. 22



5+153  
 45'-3  
 ID: 2206  
 469  
 8290

5+153  
 POA 52"  
 BELOW NEUT  
 [22'5"] RS

RS  
 TU-N 26'9"-CH-  
 TCI-F 21'10"↑

5+153  
 O RAISE TCI-F 19" [23'5"]

5+305  
 45'-3  
 ID: 2206  
 469  
 8205

5+305  
 POA 52"  
 BELOW NEUT  
 [20'11"] RS

RS  
 TU-N 25'3"-CH-  
 TCI-F 20'8"↑

5+305  
 O RAISE TCI-F 15" [21'11"]

PARKING

5+456  
 45'-3  
 ID: 2206  
 469  
 8220

5+456  
 POA 52"  
 BELOW TU-WHD  
 [19'10"] RS

RS  
 TU-N 26'7"  
 TCI-F 20'10"  
 LL  
 TU-WHD 21'10"-CH-↑

5+456  
 O EXTEND TU-WHD 28" [24'2"]

5+550  
 45'-3  
 ID: 2206  
 470  
 8229

ARAPAHO RD.

5+658  
 50'-3  
 ID: 2206  
 470  
 8235



METRO ACCESS NETWORKS, INC.

PLAN  
 1"=50'

PROPRIETARY

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CONSTRUCTION ISSUE

DALLAS COUNTY  
 ADDISON CITY LIMITS

SAFETY FIRST!

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:  
 DNLA1164  
 DATE:  
 2 MAY 97

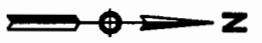
IRVING - DALLAS NORTH LOOP  
 PART I - PHASE 2

DWG. NO.  
 21 OF 107



MATCHLINE SEE DRAWING NO. 21

3+455 RISER POLE - 7+704 RISER POLE - 4,249' POLE  
 REEL IDNLO5-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
 GROUND LENGTH 33,563' SHEATH LENGTH 36,946'  
 REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
 GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



INSTALL  
 1.5/16" EHS STRAND & LASH  
 REEL IDNLO5-48 &  
 REEL TUDNLO4-12  
 3+455 - 7+704

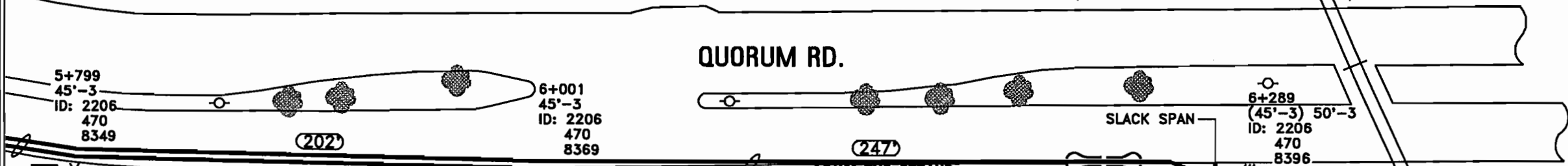
6+248  
 O EXTEND TU-TOC 52' [22'4"]

6+289  
 O REQUEST TU TO CHANGE  
 OUT POLE. (45'-3)  
 50'-3

5" NEW LL  
 TU-TOC 18'0"-CH- ↑  
 RL  
 TU-N 23'11"

FS  
 TU-N 18'0" [22'0"]  
 LL  
 TU-N 18'0" [22'0"]  
 RL  
 TU-WHD 16'6" [21'4"]-CH-

DIRECTION OF  
 ENGINEERING  
 →



QUORUM RD.

5+799  
 45'-3  
 ID: 2206  
 470  
 8349

6+001  
 45'-3  
 ID: 2206  
 470  
 8369

6+289  
 (45'-3) 50'-3  
 ID: 2206  
 470  
 8396

SCREW TYPE [5/8"]  
 ANCHOR [DT] EYE [ROD]  
 P=8" 4'/25'5"

1.5/16" EHS  
 25'/18'0" DE 12M  
 [5/8"] [DT] [SCREW TYPE] [ANCHOR]  
 [ROD] [EYE] [ANCHOR] 6+248  
 45'-3  
 ID: 2206  
 470  
 8392

6+335  
 45'-3  
 ID: 2206  
 470  
 8698

6+335  
 POA 52"  
 BELOW TU-WHD  
 [19'1"] RS

RS  
 TU-N 26'3"  
 FS  
 TU-BOT 24'10"  
 TU-WHD 23'5"-CH-  
 TU-BOT/J 25'10"

5+799  
 POA 52"  
 BELOW NEUT  
 [25'5"] RS  
 RS  
 TU-N 29'9"-CH-

6+001  
 POA 52"  
 BELOW TU-TOC  
 [20'9"] RS  
 RS  
 TU-N 27'0"  
 FS  
 TU-TOC 25'1"-CH-

MATCHLINE SEE DRAWING NO. 23



PLAN  
 1"=50'

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**CONSTRUCTION ISSUE**  
 DALLAS COUNTY  
 ADDISON CITY LIMITS

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:  
 DNLA1165  
 DATE:  
 2 MAY 97

IRVING - DALLAS NORTH LOOP  
 PART I - PHASE 2

DWG. NO.  
 22 OF 107

**SAFETY FIRST!**

3+455 RISER POLE - 7+704 RISER POLE - 4,249'

REEL IDNLO5-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,046'

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'



DIRECTION OF ENGINEERING  
→

RS  
TU-N 29'10"-CH-

RS  
TU-N 24'5"-CH-

RS  
TU-N 28'4"  
RL  
TU-TOC 26'5"-CH-

6+577  
POA 52"  
BELOW NEUT  
[25'6"] RS

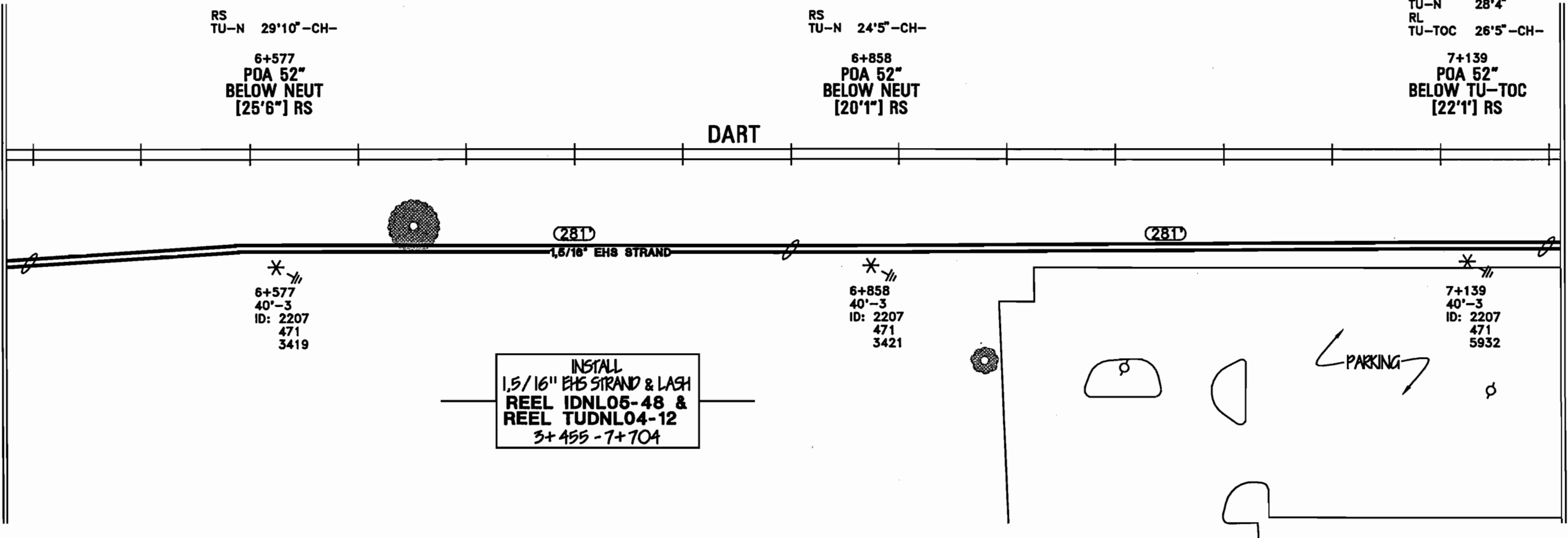
6+858  
POA 52"  
BELOW NEUT  
[20'1"] RS

7+139  
POA 52"  
BELOW TU-TOC  
[22'1"] RS

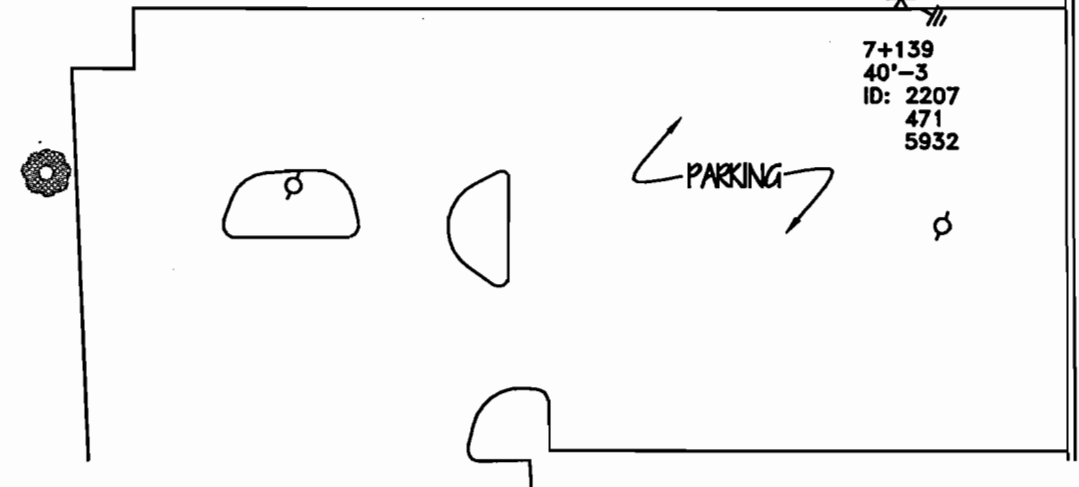
DART

MATCHLINE SEE DRAWING NO. 22

MATCHLINE SEE DRAWING NO. 24



INSTALL  
1,5/16" EHS STRAND & LASH  
REEL IDNLO5-48 &  
REEL TUDNLO4-12  
3+455 - 7+704



PLAN  
1"=50'

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**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

**SAFETY FIRST!**

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLA1166	IRVING - DALLAS NORTH LOOP PART I - PHASE 2	DWG. NO. 23 OF 107
DATE: 2 MAY 97		

3+455 RISER POLE - 7+704 RISER POLE - 4,249'

REEL IDNLO5-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

REEL TUDNLO4-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,658'

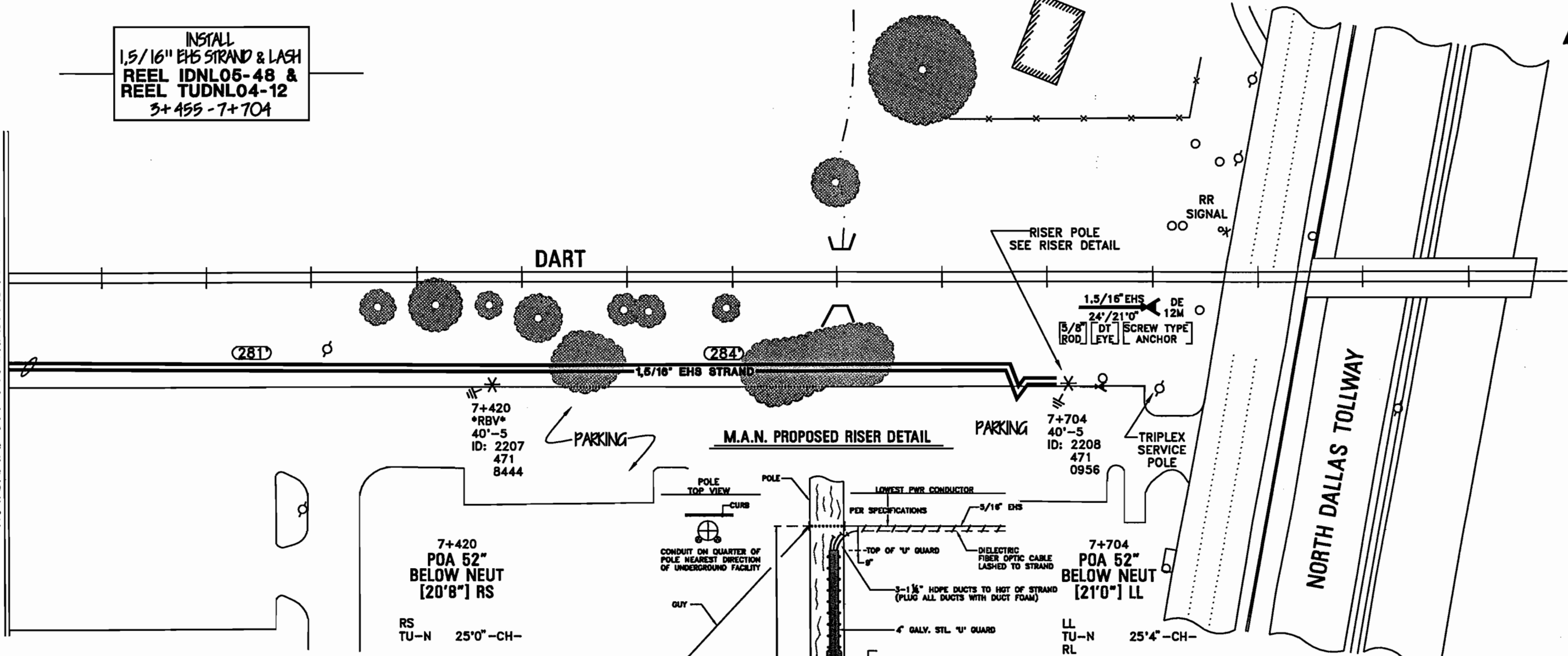
RISER POLE  
28' RISER  
28' RISER

INSTALL  
1.5/16" EHS STRAND & LASH  
REEL IDNLO5-48 &  
REEL TUDNLO4-12  
3+455 - 7+704

DIRECTION OF  
ENGINEERING  
→



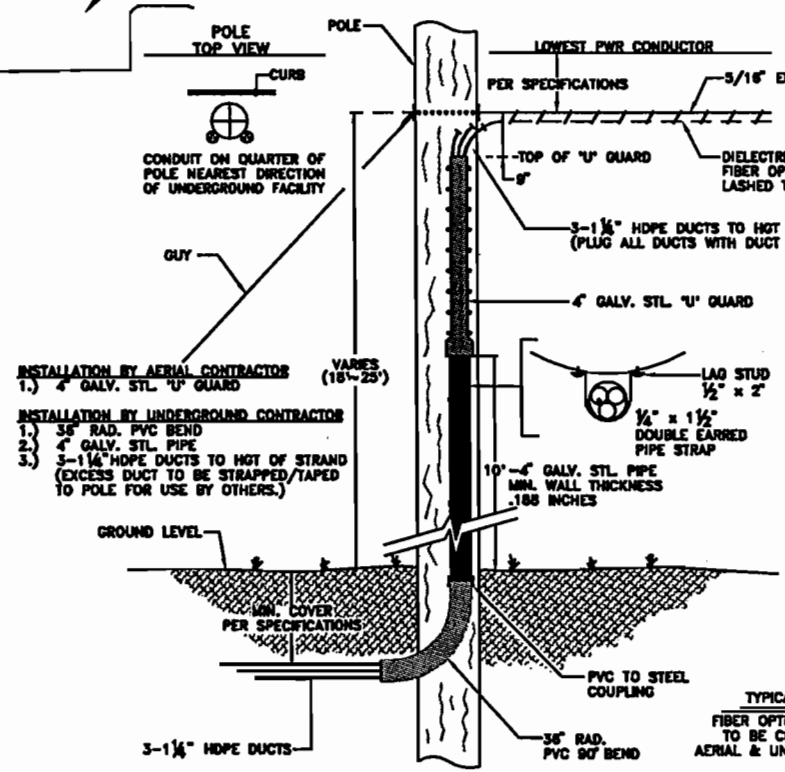
MATCHLINE SEE DRAWING NO. 23



7+420  
POA 52"  
BELOW NEUT  
[20'8"] RS  
RS  
TU-N 25'0"-CH-

7+704  
POA 52"  
BELOW NEUT  
[21'0"] LL  
LL  
TU-N 25'4"-CH-  
RL  
TU-WHD >N

7+420  
REQUEST TU TO REPAIR  
BROKEN VERTICAL.



- INSTALLATION BY AERIAL CONTRACTOR  
1.) 4 GALV. STL. "U" GUARD (VARIES (18"-25"))
- INSTALLATION BY UNDERGROUND CONTRACTOR  
1.) 36" RAD. PVC BEND  
2.) 4 GALV. STL. PIPE  
3.) 3-1 1/4" HDPE DUCTS TO HOT OF STRAND (EXCESS DUCT TO BE STRAPPED/TAPED TO POLE FOR USE BY OTHERS.)

SEE DRAWING  
25 OF 107  
FOR CONTINUATION  
(UNDERGROUND SECTION)

SAFETY FIRST!



PLAN  
1"=50'

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**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON CITY LIMITS

FORT WORTH-DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME: DNLA1167	DWG. NO. 24 OF 107
DATE: 2 MAY 97	IRVING - DALLAS NORTH LOOP PART I - PHASE 2

7+764 HH IDNL-18 - 8+144 HH IDNL-19 - 380'      HH IDNL-18      7+704 RISER POLE - 7+784 HH IDNL-18 - 80'

100' SLACK COIL

REEL IDNL05-48 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,563' SHEATH LENGTH 36,946'

100' SLACK COIL

REEL TUDNL04-12 0+000 SPLICE HH IDNL-11 - 33+563 SPLICE @ RISER POLE  
GROUND LENGTH 33,308' SHEATH LENGTH 36,668'



DIRECTION OF ENGINEERING  
←

TRENCH & INSTALL  
3-1/4" HDPE DUCT  
7+849 - 8+144

7+892 FENCE CORNER

7+880 SS MH  
7+877 PP

7+872 SS MH  
7+869 IRF

7+842 RR SIGNAL  
7+841 PP W/METER  
7+840 RR SIGNAL CAB.

7+819 ♀ TRACK

7+801 US SPRINT MKR

TRENCH & INSTALL  
3-1/4" HDPE DUCT ~ 25'  
7+764 - 7+789

PLACE HANDHOLE  
IDNL-18  
30" x 42" x 48"  
7+764

DALLAS CITY LIMITS

REEL IDNL06-48  
7+762 - 18+485  
GROUND LENGTH 10,723'  
SHEATH LENGTH 11,854'

DALLAS NORTH TOLLWAY  
SOUTHBOUND FRONTAGE RD.  
(CONCRETE)

TRENCH & INSTALL  
3-1/4" HDPE DUCT ~ 20'  
7+744 - 7+764

MATCH LINE SEE DRAWING 25B

ADDISON CITY LIMITS

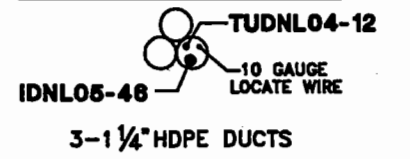
REEL IDNL05-48  
0+012 - 7+762  
GROUND LENGTH 7,750  
SHEATH LENGTH 8,702'

DIRECTIONAL BORE  
1-4" BSP E/W  
3-1/4" HDPE DUCT ~ 60'  
7+789 - 7+849

INSTALL  
REEL IDNL05-48 &  
REEL TUDNL04-12  
WITH 10 GAUGE LOCATE WIRE  
THRU VACANT 1-1/4" HDPE DUCT  
7+704 - 10+860

RISER POLE  
SEE DRAWING 24 OF 107  
FOR RISER DETAIL

7+704 RISER POLE  
TYPICAL FACILITY  
DETAIL



DIRECTIONAL BORE  
3-1/4" HDPE DUCT ~ 40'  
7+704 - 7+744

SEE DRAWING  
24 OF 107  
FOR CONTINUATION  
(AERIAL SECTION)

**SAFETY FIRST!**



**METRO ACCESS NETWORKS, INC.**

LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION!  
DIGRESS 1-800-344-8377

PLAN  
1" = 20'

**PROPRIETARY**

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1-4" BSP E/W  
3-1/4" HDPE DUCTS  
**CONSTRUCTION ISSUE**  
DALLAS COUNTY  
ADDISON/DALLAS CITY LIMITS

FORT WORTH - DALLAS ALTERNATE ACCESS TELECOMMUNICATIONS SYSTEM

FILE NAME:  
DNLB1168

DATE:  
2 MAY 97

IRVING - DALLAS NORTH LOOP  
PART 1 - PHASE 2

DWG. NO.  
25A OF 107

*MFS  
Network  
Technology's  
1994*

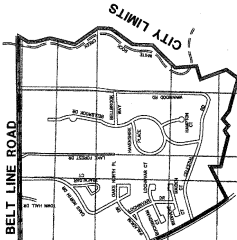
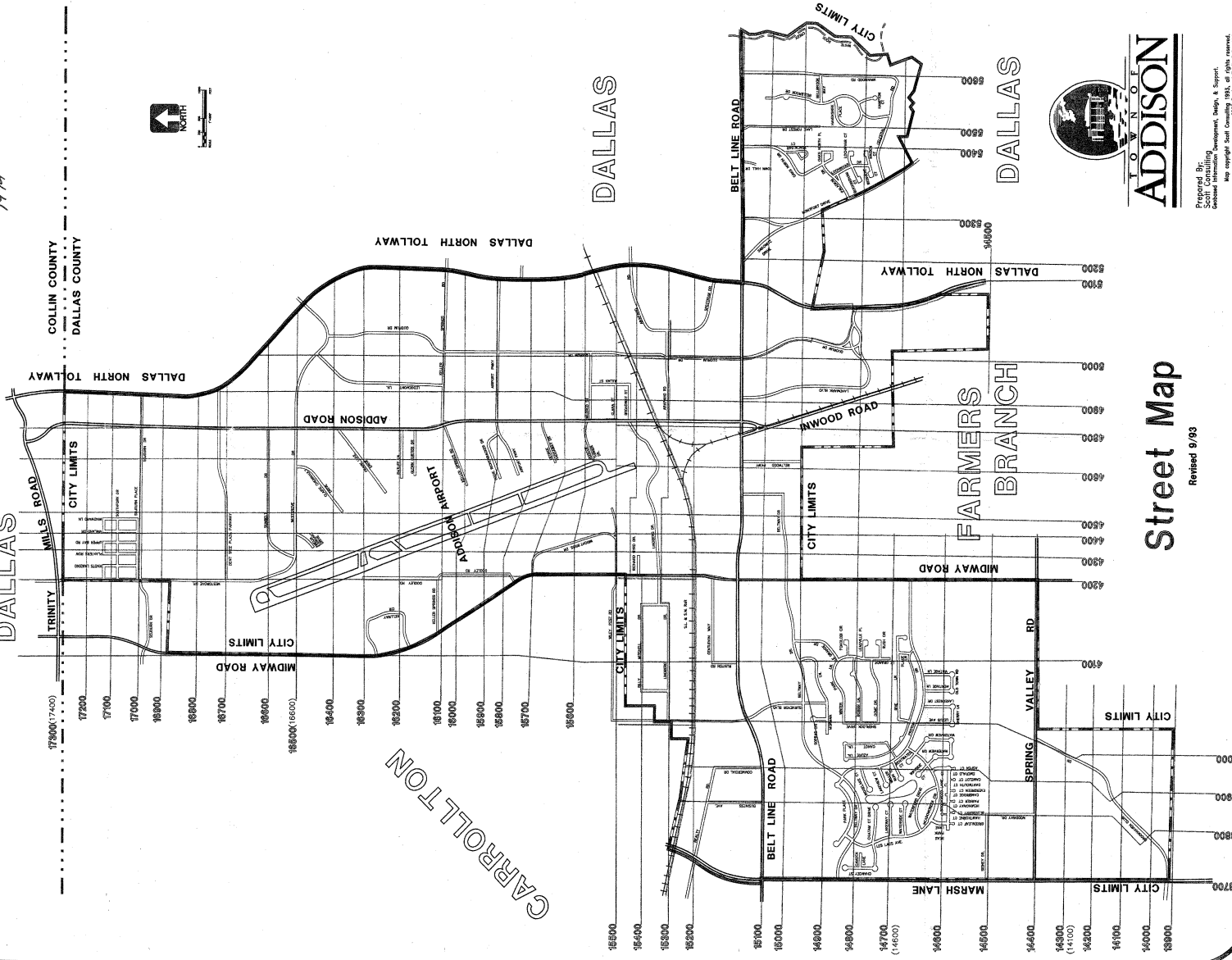
DALLAS

COLLIN COUNTY  
DALLAS COUNTY



CARROLLTON

DALLAS



DALLAS

FARMERS  
BRANCH

Street Map

Revised 9/93



TOWN OF  
**ADDISON**

Prepared By: **Flint**  
City of Addison  
Geographic Information Systems, Maps, & Support  
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Dallas, Texas 75222