

RESOLUTION NO. 2010- 103 R

A resolution authorizing the City Manager to execute a License Agreement with University of Houston-Victoria (UHV) to allow UHV to install fiber-optic cable in City right-of-way; to include portions of Red River Street, Ben Wilson Street and Houston Highway; and declaring an effective date.

THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute a License Agreement with the University of Houston-Victoria (UHV) to allow UHV to install fiber-optic cable in City right-of-way as depicted in the **Fiber Installation Map** and described in the **License Agreement** attached hereto and incorporated herein, with changes to form as are approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 29th day of June, 2010.

AYES: 7


NAYS: 0

ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 29th day of June, 2010.



ATTEST:



SCARLET SWOBODA, City Secretary

Distribution: Legal Department
 Information Technology
 Finance Department



WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


THOMAS A. GWOSDZ, City Attorney

Copies Sent: June 30, 2010

LICENSE AGREEMENT
City of Victoria and University of Houston—Victoria
Fiber Optic Cable

THE STATE OF TEXAS §

COUNTY OF VICTORIA §

That the CITY OF VICTORIA, TEXAS, a municipal corporation ("City") with principal offices at 105 W. Juan Linn Street, Victoria, Texas 77901, as Licensor, in consideration of the agreement made herein by the University of Houston--Victoria, whose address is 307 N. Ben Wilson, Victoria, Texas ("Licensee"), grants a license to Licensee to lay, construct, and maintain, at Licensee's expense, fiber optic cable in a 1 ¼ inch conduit within the right-of-way of the City from and including Red River Street, west of Ben Wilson Street, in the City, South along Ben Wilson St. to the Houston Highway and subsequently west along the Houston Highway to a point near Hospital Dr., and including a portion of the City's right-of-way along the southern edge of the Houston Highway near the intersection of Hospital Dr., as more particularly depicted on Exhibit "A", said exhibit being attached hereto and incorporated herein for all intents and purposes, and to maintain, repair, replace, remove, operate and use within the Licensed Space, such fiber optic cable and conduit.

1.

The granting of this license, and the issuance by the City of any related permits, shall not constitute any abandonment by the City of any rights of any nature in the Licensed Space.

2.

Licensee agrees that as a condition of obtaining this license it will furnish to the City Engineer all of the following:

1. As built drawing of the cable as soon as practicable;
2. It will construct handhold/pull boxes with sufficient slack and loops for future taps at Ben Wilson St. at its intersection with the Houston Highway, and at the Houston Highway at its intersection with Hospital Dr.;
3. It will furnish throughout the existence of this license agreement and any successive easement or other right to use the City's right-of-way, six (6) strands (3 Pair) of fiber optic cable for the exclusive use of the City.
4. Cable to be placed at a depth at least 48 inches.

3.

The Licensee agrees to hold harmless, defend and indemnify the City, its officers, agents, and employees from and against any and all claims, causes of action, liabilities, or damages including claims for contribution or indemnity arising directly or indirectly under or in any way connected to or associated with the construction of the fiber optic cable and conduit, including but not limited to, the maintenance, repair, replacement, or removal thereof, for which this license is granted. Licensee shall indemnify City, and for or on account of City, to make defense against all claims for damages to persons or to property alleged to have been caused through the negligent performance of any part of any work, whether that default be asserted to have been in the performance of a duty of employees to the owners of property or to the members of the public. Licensee shall be responsible to City for the acts and omissions of all persons, firms or corporations directly or indirectly employed by Licensee in connection with the maintenance, repair, replacement, or removal of the fiber optic cable and conduit.

Exhibit "A"

4.

The Licensee agrees that his use of the fiber optic cable is subject to the superior right of the City and any public utility company to construct, repair, and maintain a public street, sidewalks and utility systems within the right-of-way. The Licensee agrees to remove the cable and conduit from the Licensed Space, at its own expense, within ten (10) days of the date of notice by the City or any public utility company that the cable or conduit interferes with use of the right-of-way for construction, repair or maintenance of a utility system, sidewalk or street.

5.

The rights granted in this agreement are personal to the Licensee, and the Licensee shall not assign or transfer these rights in whole or in part to any third person without the express written consent of the City. In the event that Licensee's use of the Licensed Space ceases, and such consent for transfer of rights to a third party is not given within 90 days of the cessation of use, the Licensee shall be obligated to remove the fiber cable and conduit and repair and restore the Licensed Space surface, all at Licensee's expense, within 30 days of written notice by the City.

EXECUTED THIS ____ day of June, 2010.

CITY OF VICTORIA, LICENSOR

UNIVERSITY OF HOUSTON-VICTORIA, LICENSEE

By: _____
Charles E. Windwehen, City Manager

by: _____
_____, President

ATTEST:

APPROVED BY:

Scarlet Swoboda, City Secretary

Director of Information Technology

STATE OF TEXAS §

COUNTY OF VICTORIA §

Before me, the undersigned Notary Public, on this day personally appeared Charles E. Windwehen, City Manager of the City of Victoria, known to me to be the person and representative whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said City of Victoria, and that he executed the same as the act for such City for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of June, 2010.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF VICTORIA §

Before me, the undersigned Notary Public, on this day personally appeared _____, President of University of Houston--Victoria, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and on the behalf of the University of Houston—Victoria as its act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of June 2010.

Notary Public, State of Texas

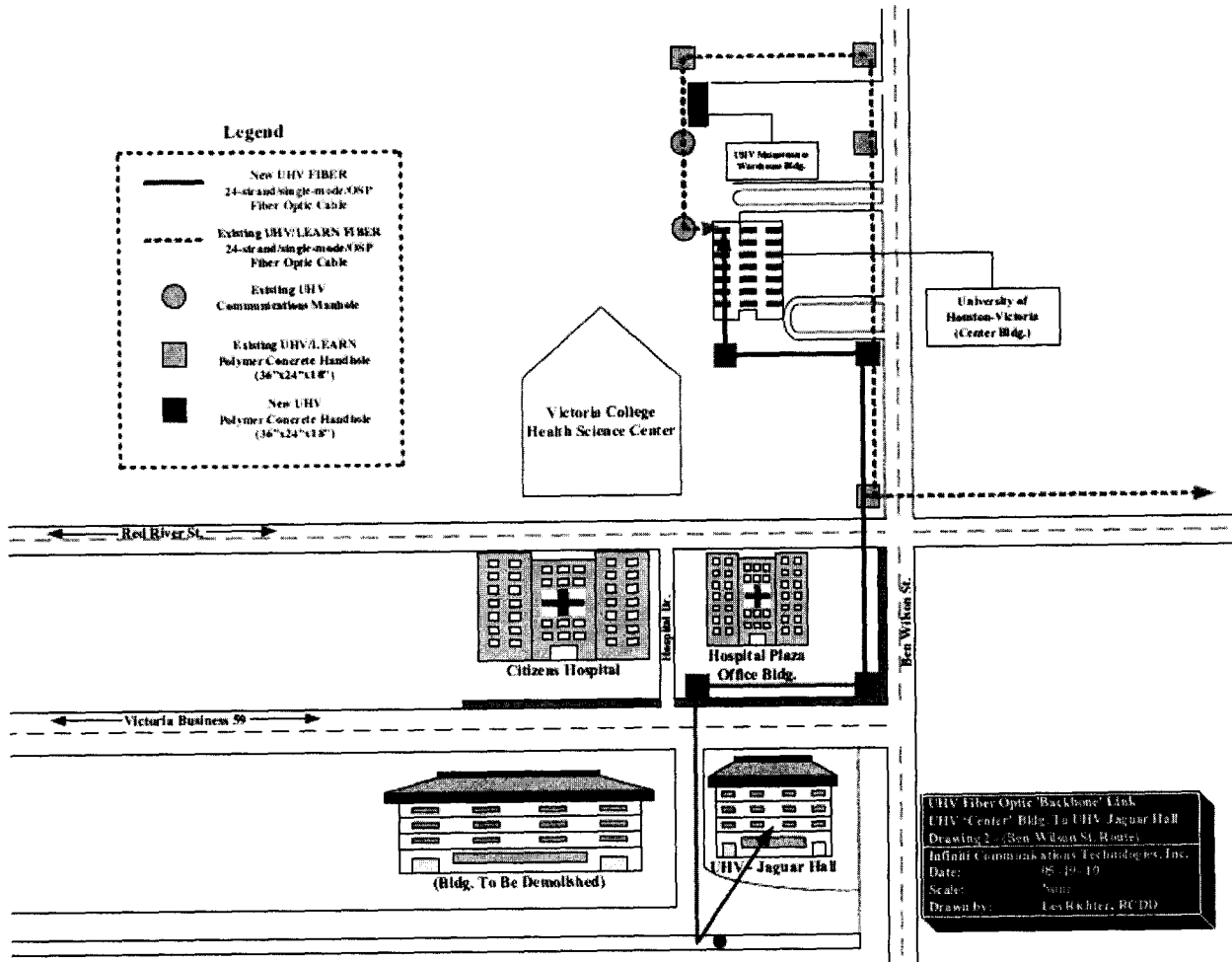


Exhibit "A"