

NOTICE OF PUBLIC MEETING

CITY OF CHIPPEWA FALLS, WISCONSIN

IN ACCORDANCE with the provisions of Chapter 19, Subchapter IV of the Statutes of the State of Wisconsin, notice is hereby given that a public meeting of the:

Board of Public Works: XXX

Reasonable accommodations for participation by individuals with disabilities will be made upon request. Please call 715-726-2736.

Will be held on **Monday, April 24, 2017 at 5:30 P.M.** in the City Hall Council Chambers, Chippewa Falls, Wisconsin. Items of business to be discussed or acted upon at this meeting are shown on the attached Agenda or listed below:

NOTE: If you are a board member and unable to attend this meeting, please contact the Engineering Dept at 726-2736.

1. Approve the minutes of the April 10, 2017 Board of Public Works meeting. (*Attachment*)
2. Consider request to replace sidewalk at #339 Dwight Street. (*Attachment*)
3. Consider Chippewa Riverfront Phase II project including but not limited to low bid of \$2,595,053.08, (\$2,630,639.43 with alternate), from Heartland Contractors, Chippewa Falls. Make recommendation to the Common Council. (*Attachment*)
4. Consider Street Privilege Permit request from Vince Schroeder doing business as Reliable Mini Warehouses LLC. Make recommendation to the Common Council. (*Attachment*)
5. Consider Draft Mobilite Chippewa Falls ROW License Agreement. Make recommendation to the Common Council. (*Attachment*)
6. Adjournment

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE CITY COUNCIL MAY BE PRESENT AT THIS MEETING TO GATHER INFORMATION ABOUT A SUBJECT OVER WHICH THEY HAVE DECISION MAKING RESPONSIBILITY.

Please note that attachments to this agenda may not be final and are subject to change.
This agenda may be amended as it is reviewed.

CERTIFICATION

I hereby certify that a copy of this Notice was placed in the Chippewa Herald mailbox, 1st floor, City Hall and posted on the City Hall Bulletin Board on Wednesday, April 19, 2017 at 1:00 PM by Mary Bowe.

**CITY OF CHIPPEWA FALLS
BOARD OF PUBLIC WORKS
MEETING MINUTES
MONDAY, APRIL 10, 2017 – 5:30 PM**

The Board of Public Works met in City Hall on Monday, April 10, 2017 at 5:30 PM. Present were Mayor Greg Hoffman, Director of Public Works Rick Rubenzer, Finance Manager Lynne Bauer and Alderperson Paul Olson. Absent was Darrin Senn. Mike Mazur of #123 Well Street was also present at the meeting.

1. **Motion** by Olson, seconded by Bauer to approve the minutes of the March 27, 2017 Board of Public Works meeting. **All present voting aye. MOTION CARRIED.**

2. The Board of Public Works considered the attached bid summary for the Bridgewater Avenue (Duncan Creek Bridge to STH #124) reconstruction project. Director of Public Works Rubenzer explained the 2017 project bids were below engineer estimates and each individual project bid had different bid items that contributed to the bids being considerably lower than the engineer estimate. He continued that project “bond” estimates vary from project bid estimates because the design has been completed at the time of the project bid estimates. He also stated that a contingency was needed for projects to cover unforeseen situations.
Motion by Rubenzer seconded by Olson to recommend the Common Council accept the low bid of \$371,739.87 and award the contract for the Bridgewater Avenue (Duncan Creek Bridge to STH #124) and Utility Improvement Project to A-1 Excavating Inc. Said award contingent on successful review of bid, performance and financial contract security and approval of all contract documents by City Attorney Ferg. **All present voting aye. MOTION CARRIED.**

3. The Board of Public Works considered the attached bid summary for the Dwight Street (Wheaton St. to Superior St.) reconstruction project.
Motion by Rubenzer seconded by Olson to recommend the Common Council accept the low bid of \$539,016.37 and award the contract for the Dwight Street (Wheaton St. to Superior St.) and Utility Improvement Project to Haas Sons Inc. Said award contingent on successful review of bid, performance and financial contract security and approval of all contract documents by City Attorney Ferg. **All present voting aye. MOTION CARRIED.**

4. The Board of Public Works considered the attached bid summary for the Water Street (State St. to Division St.) reconstruction project.
Motion by Rubenzer seconded by Olson to recommend the Common Council accept the low bid of \$687,369.51 and award the contract for the Water Street (State St. to Division St.) and Utility Improvement Project to Haas Sons Inc. Said award contingent on successful review of bid, performance and financial contract security and approval of all contract documents by City Attorney Ferg. **All present voting aye. MOTION CARRIED.**

5. The Board of Public Works considered the attached bid summary for the Woodward Avenue (Greenville St. to Summit Ave.) reconstruction project.
Motion by Olson seconded by Hoffman to recommend the Common Council accept the low bid of \$186,541.10 and award the contract for the Woodward Avenue (Greenville St. to Summit Ave.) and Utility Improvement Project to A-1 Excavating Said award contingent on successful review of bid, performance and financial contract security and approval of all contract documents by City Attorney Ferg. **All present voting aye. MOTION CARRIED.**

6. The Board of Public Works considered the attached bid summary for the Dover Street (Wheaton St. to Terrill St.) reconstruction project.
Motion by Olson seconded by Hoffman to recommend the Common Council accept the low bid of \$388,240.88 and award the contract for the Dover Street (Wheaton St. to Terrill St.) and Utility Improvement Project to Haas Sons Inc. Said award contingent on successful review of bid, performance and financial contract security and approval of all contract documents by City Attorney Ferg. **All present voting aye. MOTION CARRIED.**
7. The Board of Public Works considered the attached bid summary for the Tropicana Boulevard/Bel Air Boulevard (Mansfield St. to Terrill St.) reconstruction project.
Motion by Olson seconded by Hoffman to recommend the Common Council accept the low bid of \$232,934.78 and award the contract for the Tropicana Boulevard/Bel Air Boulevard (Mansfield St. to Terrill St.) and Utility Improvement Project to Haas Sons Inc. Said award contingent on successful review of bid, performance and financial contract security and approval of all contract documents by City Attorney Ferg..
All present voting aye. MOTION CARRIED.
8. Mike Mazur appeared to request that he be allowed to remove the sidewalk along his west property line on his property located at #123 Well Street. Director of Public Works Rubenzer explained that he is part of the Water Street Improvement Project for 2017 but that this is an independent request. He stated requests are considered on an individual basis. There is no sidewalk along the rest of the east side of Well Street between the mid-block alley and Therbrook Street so Mr. Mazur's sidewalk doesn't connect with any Well Street sidewalk
Motion by Hoffman, seconded by Olson to allow Mike Mazur to remove the sidewalk along his west property line on his property located at #123 Well Street. **All present voting aye. MOTION CARRIED**
9. The Board considered the attached draft lease proposal from Zenith Tech Inc. to lease space at the City garage and use electricity for a construction trailer/office from March 2017 until October 2017 during the STH #124 bridges resurfacing project. The proposed lease rate is \$350 per month.
Motion by Hoffman seconded by Olson to recommend the Common Council approve a lease (draft attached) with Zenith Tech Inc. for placing a construction trailer/office on City garage property and using City garage electricity for a lease rate of \$350 per month from March 2017 until October 2017.
All present voting aye. MOTION CARRIED
10. The Board considered the attached annual report under MS4 General Permit No. WI-S050075-2 for the Chippewa Falls Storm Water Utility. After discussion;
Motion by Hoffman seconded by Rubenzer to recommend the Common Council approve the attached annual report under MS4 General Permit No. WI-S050075-2 for the Chippewa Falls Storm Water Utility. **All present voting aye. MOTION CARRIED.**
11. **Motion** by Olson, seconded by Bauer to adjourn. **All present voting aye. MOTION CARRIED.** The Board of Public Works meeting adjourned at 6:07 P.M.


Richard J. Rubenzer, PE
Secretary, Board of Public Works

Mr. Krejci,

I am the owner of a property at 339 Dwight St in the City of Chippewa Falls. I have been informed of the upcoming road work to be done on Dwight St and would like to request Nyhus Concrete Specialties complete the city sidewalks, driveway approach and any other concrete work needed at 339 Dwight St. I do not wish to have Nyhus Concrete do any of the city curb and gutter due to the lack of uniformity and the scheduling issues this would cause on the project. If the replacement of the drive over curb in front of driveway approach would speed up the project I would request approval for this as well.

All work would be done in a timely manner and in accordance with all city and state codes and requirements. As you are aware Nyhus Concrete is insured, licensed and been doing quality work in the City of Chippewa Falls for many decades including multiple donated time and material projects for Irvine Park. Nyhus Concrete is currently working in the City of Chippewa Falls on various projects at the writing of this request as well as a project at Irvine Park.

I was informed by you that this request would be brought to the board; however it would not have the support of your office. I am concerned as to why this would be? Nyhus Concrete was given driveway permits to replace and improve the driveway and curb and gutter 6 years ago when the property was purchased. Why wouldn't they be able to again? Please accept my request and I look forward to the improvement of Dwight Street and the neighborhood.

Sincerely,

Chris Nyhus



Building a Better World
for All of Us[®]

BIDS RECEIVED

Chippewa Riverfront - Phase 2 Improvements
Chippewa Falls, Wisconsin
Project Manager: Timothy M. Marko, PE

SEH No. CFCIT 138292 64.20

Bid Date: 10:00 a.m., Monday, March 27, 2017

Page 1

Bidder	Addendum Acknowledged	10% Bid Bond	Base Bid Price	Alternate Bid Price	Total Base Bid Plus Alternate
Heartland Contractors Chippewa Falls	X	X	\$2,595,053.08	\$35,586.35	\$2,630,639.43
Chippewa Concrete Services Chippewa Falls, WI	X	X	\$2,858,724.70	\$34,033.50	\$2,892,758.20
Haas Sons, Inc. Thorp, WI	X	X	\$2,852,862.76	\$63,000.00	\$2,915,862.76
Pember Companies, Inc. Menomonie, WI	X	X	\$2,953,876.20	\$42,933.00	\$2,996,809.20

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**RESOLUTION GRANTING A STREET PRIVILEGE PERMIT FOR PARCEL NO. 4050.119
ON NORTHWAY DRIVE TO VINCE SCHROEDER DOING BUSINESS AS
RELIABLE MINI WAREHOUSES, LLC**

WHEREAS, on September 9, 2013, Two Rivers Real Estate LLC applied for a Street Privilege Permit to construct and maintain a commercial driveway upon the dedicated but yet unopened and unimproved public right-of-way of Northway Drive lying South of County Trunk Highway "S" and a fifty foot wide strip of Xcel Energy owned land in the City of Chippewa Falls, Wisconsin; and

WHEREAS, on October 1, 2013, Two Rivers Real Estate LLC was granted Street Privilege Permit Resolution No. 2013-40 on an approximate 6 acre parcel (# 4050.119) being Lot No. 119 of the Wissota Green Plat; and

WHEREAS, Two Rivers Real Estate LLC sold the said approximate 6 acre parcel (#4050-119), to Vince Schroeder doing business as Reliable Mini Warehouses LLC in 2017; and

WHEREAS, Vince Schroeder doing business as Reliable Mini Warehouses LLC requires access across said unopened and unimproved Northway Drive right-of-way in order to develop said parcel # 4050.119 as a mini storage building site.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF CHIPPEWA FALLS, WISCONSIN that a Street Privilege Permit be and is hereby granted under Chapter 66.0425 Wisconsin Statutes to the owner of parcel # 4050.119 to construct and maintain a private commercial driveway upon the dedicated but yet unopened and unimproved public right-of-way of Northway Drive lying South of County Trunk Highway "S" and a fifty foot wide strip of Xcel Energy owned land under the following conditions:

1. That the permit is granted for the public right-of-way of Northway Drive in the plat of Wissota Green, lying South of County Trunk Highway "S" and shown on the attached map.

2. That pursuant to Municipal Code 8.04, the owner of parcel # 4050.119 or his qualified contractor shall obtain a driveway permit from the Engineering Department for the driveway approach at Northway Drive.

3. That the commercial driveway shall be located on the Northway Drive right-of-way as shown on the attached map.

4. That the commercial driveway shall be blacktopped before usage.

5. That access and egress to and from parcel # 4050.119 shall be only across the said dedicated but yet unopened public right-of-way of Northway Drive.

6. That the public retains ownership of the effected Northway Drive right-of-way.

7. That Reliable Mini Warehouses LLC or any future owner of parcel # 4050.119 shall be primarily liable for damages to person or property by reason of the granting of this privilege as provided

in Wisconsin Statutes and shall maintain liability insurance on the facilities covered by this permit as approved by the City Attorney.

8. That the permittee shall be responsible for restoring any part of these facilities in the event that the City must disturb or remove said improvements for construction, replacement or maintenance of City-owned facilities within the effected right-of-way.

9. That the term of the permit is 10 years, which term may be extended as the City Council sees fit. However, the City retains all its rights in Section 66.0425 Wisconsin Statutes regarding removal of improvements upon 10 days notice.

10. That to the extent reasonably possible, the City will endeavor to give the permittee one year notice in the event that the City will not renew or extend the terms of the permit beyond the initial 10 year term. However, the City will retain all its rights as provided in Section 66.0425 Wisconsin Statutes regarding removal of improvements upon a 10 day notice.

11. That this permit is issued to the owner of parcel # 4050.119.

12. That the permittee by accepting this permit, waives the right to contest in any manner of the validity of the Section 66.0425 Wisconsin Statutes on the conditions of this permit.

13. That the permittee is responsible for removal of any and all improvements made in the street right-of-way and will restore the area upon due notice as required by Wisconsin Statutes.

14. That Reliable Mini Warehouses LLC or any future owner of parcel # 4050.119 shall be responsible for replacement, maintenance and snow removal of said commercial driveway until such time as Northway Drive is opened to the public for travel.

15. That any subdivision of parcel # 4050.119 will void this permit.

16. That no parking is permitted along this commercial driveway.

17. That there will be no compensation to the permittee in the event that the City opens this section of Northway Drive to public travel and authorizes the construction of street improvements and paving.

18. That no structures, gates or other encumbrance be placed on said unopened public right-of-way of Northway Drive.

Dated this 16th day of May, 2017

ADOPTED: _____

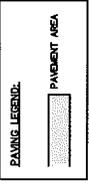
Council President

APPROVED: _____

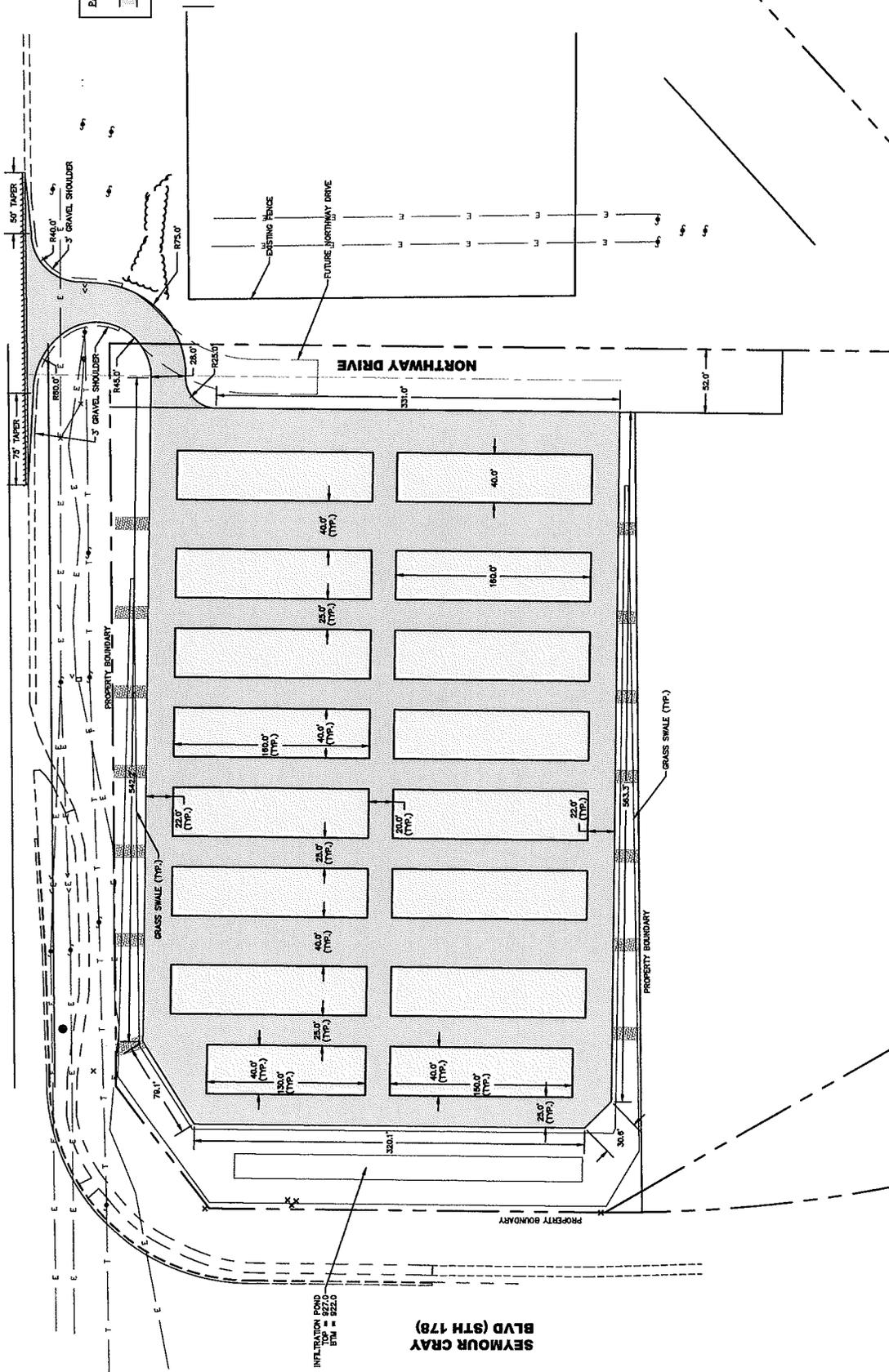
Mayor

ATTEST: _____

City Clerk



C.T.H.S



INfiltration POND
 50' x 22.0'
 51' x 22.0'

SEYMOUR CRAY
 BLVD (9TH 178)

NO.	DATE	REVISIONS	DRAWN BY	DESIGN BY	CHECKED	PROJ. NO.	SITE PLAN			RELIAIBLE MINI WAREHOUSES, LLC CITY OF CRIPPEAN FALLS, WI	DWG NAME 17817.PCS SITE	3	
							DATE	DATE	DATE				
						17817						2/2017	5

ADVANCED ENGINEERING CONCEPTS
 1500 W. WISCONSIN ST.
 WAUKESHA, WI 53186
 PH: 716-552-0330
 COPYRIGHT 2017 AEC LLC.



State Statute 66.0425 September 6, 2013

66.0425 Privileges in streets.

(1) In this section, "privilege" means the authority to place an obstruction or excavation beyond a lot line, or within a highway in a town, village, or city, other than by general ordinance affecting the whole public.

(2) A person may apply to a town or village board or the common council of a city for a privilege. A privilege may be granted if the applicant assumes primary liability for damages to person or property by reason of the granting of the privilege, is obligated to remove an obstruction or excavation upon 10 days' notice by the state or the municipality and waives the right to contest in any manner the validity of this section or the amount of compensation charged. The grantor of the privilege may require the applicant to file a bond that does not exceed \$10,000; that runs to the town, village, or city and to 3rd parties that may be injured; and that secures the performance of the conditions specified in this subsection. If there is no established lot line and the application is accompanied by a blue print, the town or village board or the common council of the city may impose any conditions on the privilege that it considers advisable.

(3) Compensation for a privilege shall be paid into the general fund and shall be fixed by the governing body of a city, village or town or by the designee of the governing body.

(4) The holder of a privilege is not entitled to damages for removal of an obstruction or excavation, and if the holder does not remove the obstruction or excavation upon due notice, it shall be removed at the holder's expense.

(5) Third parties whose rights are interfered with by the granting of a privilege have a right of action against the holder of the privilege only.

(6) Subsections (1) to (5) do not apply to telecommunications carriers, as defined in s. 196.01 (8m), telecommunications utilities, as defined in s. 196.01 (10), alternative telecommunications utilities, as defined in s. 196.01 (1d), public service corporations, or cooperatives organized under ch. 185 to render or furnish gas, light, heat, or power, or to cooperatives organized under ch. 185 or 193 to render or furnish telecommunications service, but the carriers, utilities, corporations and associations shall secure a permit from the proper official for temporary obstructions or excavations in a highway and are liable for all injuries to person or property caused by the obstructions or excavations.

(7) This section does not apply to an obstruction or excavation that is in place for less than 90 days, and for which a permit has been granted by the proper official.

(8) This section applies to an obstruction or excavation by a city, village or town in any street, alley, or public place belonging to any other municipality.

(9) Any person who violates this section may be fined not less than \$25 nor more than \$500 or imprisoned for not less than 10 days nor more than 6 months or both.

(10) A privilege may be granted only as provided in this section.

History: 1985 a. 297; 1991 a. 316; 1993 a. 184, 246; 1997 a. 27; 1999 a. 150 ss. 111, 114; Stats. 1999 s. 66.0425; 2005 a. 441.
When the plaintiff fell due to a depression in a street enclosed as a temporary sidewalk, the city, not the indemnitor contractor, was primarily liable since the contractor did no excavation in the street and its enclosing of the street did not cause the defect.
Webster v. Klug & Smith, 81 Wis. 2d 334, 260 N.W.2d 686 (1978).

**MASTER LICENSE AGREEMENT BETWEEN
THE CITY OF CHIPPEWA FALLS AND
WISCONSIN TECHNOLOGY NETWORKING, LLC,
FOR THE USE OF PUBLIC RIGHTS-OF-WAY**

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**MASTER LICENSE AGREEMENT BETWEEN
THE CITY OF CHIPPEWA FALLS AND
WISCONSIN TECHNOLOGY NETWORKING, LLC,
FOR THE USE OF PUBLIC RIGHTS-OF-WAY**

This MASTER LICENSE AGREEMENT FOR THE USE OF PUBLIC RIGHTS OF WAY ("Agreement") is made and entered into by and between the City of Chippewa Falls ("City" or "Licensor"), and Wisconsin Technology Networking, LLC, a Delaware limited liability company ("Licensee"). Licensor and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WHEREAS, Licensee has requested use of certain locations within the public rights-of-way of the City to install, maintain and operate communications facilities as specified in this Agreement; and

WHEREAS, the City has the power to regulate the public rights-of-way within its territorial boundaries and is willing to permit such use subject to the terms and conditions of this Agreement;

NOW THEREFORE, IN RECOGNITION OF MUTUAL CONSIDERATION, THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this Agreement the following terms shall have the same meanings herein. When not inconsistent with the context, words in the plural number include the singular number, and words in the singular include the plural.

- (a) "Annual License Fee" means the annual rate described in Section 5 of this Agreement.
- (b) "Backhaul Equipment" means broadband backhaul transmission facilities, whether provided by landline communications infrastructure (including, without limitation, fiber, conduit and related equipment and improvements) ("Landline Backhaul Equipment") and/or wireless communications infrastructure (including, without limitation, wireless microwave and related cables, wires, equipment and improvements) ("Wireless Backhaul Equipment") that interconnects with Wireless

Communication Equipment at the Point-of-Demarcation and is for the purpose of providing Backhaul Service.

- (c) “Backhaul Service” means communications transport service, whether provided by Landline Backhaul Equipment or Wireless Backhaul Equipment that interconnects with the Wireless Communication Equipment at the Point-of-Demarcation.
- (d) “City Representative” means the then current person at the City that oversees administration of this Agreement, or his/her designee.
- (e) “Communication Facility” means Wireless Communication Equipment and/or Backhaul Equipment.
- (f) “Communication Service” means Wireless Communication Service and/or Backhaul Service.
- (g) “Communication Site” means a location in the Public Rights-of-Way selected for the Communication Facility.
- (h) “Communication Site Application” means a document, substantially in the form attached as Exhibit A, which shall identify the location of the proposed Communication Site, describe the characteristics of the proposed Communication Facility installation, and be accompanied by relevant documents to support approval of the proposed installation.
- (i) “Communication Sites Inventory” means an accurate and current inventory of all Communication Sites approved by Licensor pursuant to this Agreement.
- (j) “Effective Date” means the latest date on which this Agreement is signed by both Parties.
- (k) “Point of Demarcation” means the point of where the Wireless Communication Equipment terminate and interconnect with Backhaul Equipment.
- (l) “Rights-of-Way” or “Public Rights-of-Way” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the City or over which the City exercises any rights of management control.
- (m) “Rights-of-Way Regulations” means all portions of City ordinances that concern the regulation or management of Public Rights-of-Way, which are applicable to all utilities operating within the Public Rights-of-Way.

- (n) “Rights-of-Way Manager” means the then current person at the City that oversees the Public Rights-of-Way, or his/her designee.
- (o) “Supplemental License” means a document, substantially in the form attached as Exhibit B. Each Communication Site installation will be subject to a Supplemental License.
- (p) “Transmission Media” means radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices which are part of the Wireless Communication Equipment.
- (q) “Unauthorized Communication Site” means use of Public Rights-of-Way for the installation of Communication Facility on City poles or poles owned by another party, or for the installation of Licensee poles or any other facilities, for which Licensee did not receive approval under this Agreement.
- (r) “Unauthorized Installation Charge” means the license fee payable by Licensee to Licensor under this Agreement for an Unauthorized Communication Site.
- (s) “Wireless Communication Service” means wireless, Wi-Fi, voice, data, messaging, or similar type of wireless service now or in the future offered to the public in general using spectrum radio frequencies, whether or not licensed by the Federal Communication Commission (“FCC”) or any successor agency.
- (t) “Wireless Communication Equipment” means the Transmission Media attached, mounted, or installed on a pole located in Public Rights-of-Way, in addition to control boxes, cables, conduit, power sources, and other equipment, structures, plant, and appurtenances between the Transmission Media and the Point-of-Demarcation for the purpose of providing Wireless Communication Service.

SECTION 2. GRANTING CLAUSE

- (a) **License to Use Rights-of-Way** – Licensor hereby grants Licensee, a non-exclusive license to use and occupy Rights-of-Way throughout the territorial boundaries of the City, as these boundaries may be adjusted from time-to-time due to annexations, for the permitted uses contemplated under Section 3, subject to the conditions outlined in this Agreement.
- (b) **License to Use City Poles** – Licensor also grants Licensee the right to use City poles for the purpose of attaching the Communication Facility based on the

then-current inventory of City poles. Access to individual City poles will be determined on a case-by-case basis pursuant to the provisions of this Agreement.

- (c) **Non-Exclusive License** – The Licensee’s right to use and occupy the Public Rights-of-Way and attach to City poles shall not be exclusive as the City reserves the right to grant a similar use of same to itself or any person or entity at any time during the Term.

SECTION 3. PERMITTED USE OF RIGHTS-OF-WAY

- (a) **Provision of Personal Communication Service** – Public Rights-of-Way may be used by Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the installation, construction, use, maintenance, operation, repair, modification, replacement and upgrade of the Communication Facility by Licensee from time to time for Wireless Communication Service and/or Backhaul Service or to comply with applicable law, and not for any other purpose whatsoever. This Agreement shall include new types of Wireless Communication Equipment or Backhaul Equipment that may evolve or be adopted using wireless technologies. Licensee shall, at its expense, comply with all Laws, and Rights-of-Way Regulations in connection with the use of Public Rights-of-Way.
- (b) **Installations** – Wireless Communication Equipment and Wireless Backhaul Equipment may be installed only on Licensor’s poles under the terms of this Agreement, on poles under the terms of a separate agreement with the owner of such poles, or on Licensee’s poles and surrounding space until the Point-of-Demarcation, and Landline Backhaul Equipment may be installed only at the locations and as provided in a Supplemental License executed by the City. If the Communication Facility is to be installed on a Licensee pole, such pole shall be deemed part of the Communication Facility for purposes of this Agreement.

SECTION 4. TERM AND AMENDMENTS

- (a) **Term of Agreement** – The term of this Agreement shall be for ten (10) years commencing on the Effective Date and ending at midnight on the last day of the term (the “Initial Term”), provided however that, unless either Party provides written notice to the other Party prior to expiration of the Initial Term that the notifying Party will not renew the Term, the Term will automatically renew for three (3) successive three (3) year renewal periods, upon the same terms and conditions set forth in this Agreement. Thereafter this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (each an “**Annual Term**”) until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. The Initial Term, any renewal period[s] and any

Annual Terms are hereinafter collectively referred to as the "Term". Notwithstanding the foregoing, in no event shall the Term expire until: (i) terminated pursuant to Section 18, or (ii) the expiration or earlier termination of all Supplemental Licenses entered into hereunder.

- (b) **Supplemental Licenses** – Each Communication Site will be subject to a Supplemental License pursuant to the terms and conditions of this Agreement. The initial term of each Supplemental License shall be for five (5) years commencing on the date the corresponding Communication Site Application is approved as provided hereunder ("Commencement Date"), provided however that, so long as the Term is still in effect, unless Licensee provides written notice to the City prior to the expiration of the then current term that Licensee will not renew the term, the term will automatically renew for three (3) consecutive three (3) year periods, upon the same terms and conditions set forth in this Agreement. Thereafter the Supplemental License shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (each an "**Supplemental License Annual Term**") until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Supplemental License Annual Term.
- (c) **Termination of Supplemental Licenses** – A Supplemental License may be terminated prior to the expiration of the Term: (i) by Licensor upon notice to Licensee, if Licensee fails to pay any amount when due hereunder concerning the applicable Communication Facility and such failure continues for fifteen (15) days after Licensee's receipt of written notice of nonpayment from Licensor; or (ii) by either Party upon notice to the other Party, if such other Party materially breaches any provision of this Agreement concerning the applicable Communication Facility and the breach not cured within sixty (60) days after receipt of written notice of the breach from the non-breaching Party; or (iii) by Licensee, at any time, with or without cause, upon notice to Licensor.
- (d) **Effect of Termination** – All Annual License Fees paid prior to the expiration or earlier termination of the Supplemental License shall be retained by Licensor. Within thirty (30) days after such expiration or earlier termination, Licensee shall provide the City Representative with a schedule and timeline for removing the Communication Facility reasonably acceptable to the City Representative, excluding certain subsurface infrastructure, the permanent abandonment of which shall be deemed to occur on the 120th day after removal of the above-surface portions of the Communication Facility and shall be deemed a transfer of ownership of such subsurface infrastructure to the City and be deemed no longer part of the Communication Facility, provided, however, that permanent abandonment shall not be deemed to occur with respect to any portions expressly excluded from abandonment as specified in a notice form Licensee to Licensor during the 120-day

period or as otherwise agreed to in writing between the Parties. Licensee shall continue to be liable to Licensor for the Annual License Fee prorated for every month that such Communication Facility remains in the Rights-of-Way and the Supplemental Licensee shall be deemed to remain in effect until it is removed. After such removal, the Supplemental License shall be of no further force or effect and Licensee shall have no further obligations for the payment of Annual License Fees to Licensor in connection therewith.

SECTION 5. LICENSE FEES

- (a) **Annual License Fee** – The Annual License Fee per Communication Site shall be as provided in the following table depending on the type of Communication Facility thereat:

Type of Communication Facility:	Annual License Fee:
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by Licensor or a new pole installed and owned by Licensee	\$1,000.00
Landline Backhaul Equipment	The City’s standard underground utility rate

- (b) **Timing of License Fee Payments** – Licensee shall pay in advance to Licensor the Annual License Fee for the coming year for each Communication Site. The Annual License Fee for all Communication Sites installed during any given month will commence and be due on the first day of the following month (the “License Fee Commencement Date”). Thereafter, on each annual anniversary of License Fee Commencement Date, Licensee shall pay Licensor the Annual License Fees.
- (c) **Late Payment Interest** – Any Annual License Fees not paid within fifteen (15) days of notice of non-payment will be assessed a rate of 10% per annum from that date.
- (d) **Annual License Fees to Licensor** – Licensee shall pay Licensor the fees specified in this Section in the form of a money transfer or a check made out to the order of the City of Chippewa Falls and sent to:

City of Chippewa Falls
 30 W. Central Street
 Chippewa Falls, Wi 54729

SECTION 6. APPROVAL OF COMMUNICATION SITES

- (a) **Communication Site Application** – Licensee shall file with the City Representative a Communication Site Application for every proposed Communication Site. Said application form may be modified from time-to-time by the City Representative as deemed necessary in order to more efficiently process applications from Licensee.
- (b) **Communication Site Approval Process** – Upon filing of a Communication Site Application, during the first year of the Initial Term, the City Representative shall process the Communication Site Application within sixty (60) days of receipt of the same, unless the City Representative and Licensee agree in writing to extend such process, commencing in the second year of the Initial Term and thereafter for the Term, the City Representative shall process the Communication Site Application within forty-five (45) days of receipt of the same.
- (1) **Rights-of-Way Determination** – The Licensor will determine whether the location (and any existing pole) identified by Licensee as a Communication Site is within City Rights-of-Way.
- (2) **Ownership of City Pole** – The Licensor will confirm the ownership of any City pole identified for installation of the Communication Facility.
- (3) **Site Eligibility** – Licensor shall determine whether a requested City pole or the location for the installation for a new pole is eligible as a Communication Site based on space availability or other considerations. In addition, Licensor must determine whether public safety considerations prevent eligibility of a pole as a Communication Site. Concerning a request to install a new pole, Licensor shall determine whether Rights-of-Way Regulations and availability of Rights-of-Way prevent the pole installation at the requested location.
- (4) **Review Criteria** – For each Communication Site Application, the City Representative shall:
- a. Verify that the Communication Site Application is complete.
 - b. Review engineering design documents to determine:
 - i. compliance with contractual requirements under this Agreement; and
 - ii. no interference with City public safety radio system, traffic signal light system, or other communications components; and

- iii. compliance with City pole attachment regulations for City poles, including replacement of an electric meter with dual meters, if and as applicable.

- c. Determine compliance with any other applicable requirements.

All Communication Site Applications requesting access to a City pole must include a load bearing study to determine whether the attachment of the Communication Facility may proceed without pole modification or whether the installation will require pole reinforcement or replacement. If pole reinforcement or replacement is necessary, Licensee shall provide engineering design and specification drawings demonstrating the proposed alteration to the pole. Any modification or reinforcement or replacement of any City pole that is required to accommodate Licensee's Communication Facility shall be done at Licensee's cost.

As appropriate, the City Representative shall require Licensee to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in an incomplete Communication Site Application which may not be processed under this Agreement.

- (5) **Approval of Application** – Upon finding that the Communication Site Application is complete and in compliance with all applicable requirements as outlined above, the City Representative shall approve such Communication Site application. The approval of the Communication Site Application requesting to attach to a City pole, or to install a new pole, shall authorize Licensee to proceed to obtain all generally applicable, ministerial permits that are required of all occupants of the Public Rights-of-Way, if required (collectively, "ROW Permit"). Licensee shall comply with the requirements of the Rights-of-Way Regulations. Licensee shall pay all appropriate Wisconsin standard promulgated one-time ROW Permit fees ("ROW Permit Fees"), if required. Licensor may impose on the ROW Permit only those conditions that are necessary to protect structures in the Public Rights-of-Way, to ensure the proper restoration of the Public Rights-of-Way and any structures located therein, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the safety of the public's utilization of the Public Rights-of-Way. In no event shall Licensor treat Licensee's Communication Site Applications or ROW Permit applications in a more burdensome manner than Licensor treats Public Rights-of-Way access permits of all other public utilities and telecommunications services providers. Upon obtaining a ROW Permit, Licensee may proceed to install the Communication Facility in coordination with any affected City departments. Approval of a Communication Site Application

related to the use of a pole owned by a third party, shall authorize Licensee to proceed with attachment process applicable to the pole owner and in accordance with the pole owner's regulations proceed to install the Communication Facility in coordination with any affected City departments.

- (6) **Execution of Supplemental License** – Upon approval of the Communication Site Application, the Parties shall execute a Supplemental License, which shall be effective as of the date of application approval.

SECTION 7. CONSTRUCTION WORK-REGULATION BY CITY

- (a) **Compliance with Law Required** – The work done by Licensee in connection with the installation, construction, maintenance, repair, and operation of Communication Facility on poles within the Public Rights-of-Way shall be subject to and governed by all pertinent Laws, including the City's Rights-of-Way Regulations, that are applicable to ensuring the work done does not unduly inconvenience the public in the use of the surface of the streets and sidewalks.
- (b) **Duty to Minimize Interference** – All pole excavations, construction activities, and aerial installations on poles in the Rights-of-Way shall be carried on as to minimize interference with the use of City's Rights-of-Way and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety and convenience.

SECTION 8. CONSTRUCTION, RESTORATION AND MAINTENANCE ACTIVITIES

- (a) **Eligibility of City Pole** – Prior to submitting a Communication Site Application related to the use of a City pole, Licensee shall verify with the City the eligibility of the specified pole for attachment of the Communication Facility. In addition, Licensee shall conduct an engineering load bearing study to determine whether the pole can withstand the added weight of the Communication Facility. If the proposed installation will require pole reinforcement or replacement, the engineering design documents included with the Communication Site Application shall include specifications relating to the proposed pole reinforcement or replacement. Construction activities involving pole reinforcement or replacement shall be coordinated with applicable City personnel and the Rights-of-Way Manager.
- (b) **Compliance with Rights-of-Way Regulations** – In the installation, construction, maintenance, upgrade, and operation of Communication Facility, Licensee shall comply with the provisions of the Rights-of-Way Regulations, including but not limited to provisions pertaining to the following activities:

- (1) construction activities related to the installation, maintenance, repair, upgrade, and removal of Communication Facility on existing poles in the Rights-of-Way;
 - (2) installation of new poles in the Rights-of-Way;
 - (3) cut or otherwise disturb the surfaces of the Rights-of-Way;
 - (4) disruption of vehicular and pedestrian traffic on Rights-of-Way to a minimum as reasonably necessary to execute the required work;
 - (5) applicable excavation and restoration standards; and
 - (6) pavement repairs.
- (c) **Submission of Engineering Plans** – Prior to installation, Licensee shall submit engineering plans to the Rights-of-Way Manager for review and approval in accordance with the Rights-of-Way Regulations.
- (d) **Identification of Utility Lines** – Prior to beginning any excavation or boring project on Public Rights-of-Way, Licensee engage a utility locator service. Licensee has the responsibility to protect and support the various utility facilities of other providers while conducting construction, installation, and maintenance operations.
- (e) **Maintenance and Repair of Communication Facility** – Licensee shall, at Licensee’s cost, keep and maintain all Communication Facility installed on Public Rights-of-Way in commercially reasonable condition and repair throughout the Term, normal wear and tear and casualty excepted. Licensee shall, at Licensee’s cost, have the right to conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Communication Facility at any time during the Term.
- (f) **Upgrade of Communication Facility** – Licensee shall have the right to upgrade the Communication Facility with next-generation equipment and innovative new technologies. Prior to making any such equipment or technology upgrade that materially changes the size or weight of the Communication Facility, Licensee shall file a Communication Facility Application with the City Representative, who shall review the application for compliance with the permitted use under this Agreement and to verify that the new installation will not cause any interference with City’s public safety communications system, traffic light signal system, or other City communications infrastructure operating on spectrum where the City is

legally authorized to operate. Licensee will address any interference issues prior to approval of such application.

- (g) **Coordination of Maintenance and Equipment Upgrade Activities** – Prior to Licensee engaging in planned or routine maintenance activities, or equipment upgrades concerning Communication Facility attached to a City pole, Licensee shall provide twenty (20) days advance notice to the City Representative in order to coordinate such maintenance activities with City operations or other public safety functions. Licensee shall obtain a ROW Permit prior to engaging in any maintenance or equipment upgrade activities in the Rights-of-Way regardless of pole ownership. Such twenty (20) day advance notice shall not be required in the case of an emergency.
- (h) **Removal of Non-Compliant Installations** – The City shall have the authority at any time to order and require Licensee to remove and abate any Communication Facility or other structure that is in violation of the City’s Rights-of-Way Regulations. In case Licensee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of Licensee, all without compensation or liability for damages to Licensee.
- (i) **Reservation of Rights** – The City reserves the right to install, and permit others to install utility facilities in the Rights-of-Way. In permitting such work to be done by others, the City shall not be liable to Licensee for any damage caused by those persons or entities.
- (j) **No Limitation in City’s Operation of Traffic Light Signal System** – The Parties agree that this Agreement does not in any way limit Licensor’s right to locate, operate, maintain, and remove City traffic light poles in the manner that best enables the operation of its traffic light signal system and protect public safety. The City Representative may deny access to City traffic light poles due to operational conditions at the requested site, limited space availability, public safety concerns, future traffic signal system planning, or other operational considerations. Further, nothing in this Agreement shall be construed as granting Licensee any attachment right to install Communication Facility to any specific traffic light pole, other than an approved Communication Site Application and execution of the corresponding Supplemental License under the terms of this Agreement.
- (k) **Coordination of Traffic Light Maintenance Activities and Emergency Response** – Prior to conducting planned or routine maintenance on specific components of City poles where Communication Facility has been installed, the City shall provide Licensee as much advance notice of such maintenance activities as reasonably possible under the circumstances. In advance of such maintenance

activities, Licensee shall temporarily cut-off electricity to its Communication Facility for the safety of maintenance personnel. In the event of failure of components of the traffic light signal system for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks, Licensor will respond to restore traffic light signal operations as a matter of public safety under the emergency provisions outlined in Section 12. Notwithstanding the forgoing, Licensee may not install a new pole, without Licensor's approval, which approval shall not be unreasonably withheld, delayed or conditioned. Should the events that results in damage or failure of the traffic light signal system also affect Communication Facility, Licensee shall have the sole responsibility to repair or replace its Communication Facility and shall coordinate its own emergency efforts with the City.

SECTION 9. SUPERVISION BY CITY OF LOCATION OF POLES

- (a) **Supervision by Rights-of-Way Manager** – In the event Licensee desires to install poles on Public Rights-of-Way in order to install Communication Facility at a selected Communication Site, such poles shall be owned and maintained by Licensee. Such poles shall be of adequate strength and straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location of all Licensee's personal property, poles, and electrical connections placed and constructed by the Licensee in the installation, construction, and maintenance of Communication Facility shall be subject to the lawful, reasonable and proper control, direction and/or approval of the Rights-of-Way Manager.
- (b) **Pre-Approval by Rights-of-Way Manager** – Prior to submitting a Communication Site Application covering the installation of a new pole, Licensee shall verify with the Rights-of-Way Manager the eligibility of the Rights-of-Way location for the proposed pole installation. Licensee shall include in the Communication Site Application documentation from the Rights-of-Way Manager approving the proposed pole location in the Rights-of-Way.

SECTION 10. INTERFERENCE WITH OTHER FACILITIES PROHIBITED

- (a) **Interference with Rights of Others Prohibited** – Licensee shall not impede, obstruct or otherwise interfere with the installation, existence and operation of any other facility in the Rights-of-Way, including sanitary sewers, water mains, storm water drains, gas mains, poles, aerial and underground electrical infrastructure,

cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or City personal property.

- (b) **Signal Interference with City's Communication Infrastructure Prohibited** – In the event that Licensee's Communication Facility interferes with the City's traffic light signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Licensee will respond to the Licensor's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.

SECTION 11. COMPLIANCE WITH UTILITY REGULATIONS

- (a) **Compliance with Local Regulations** – All Communication Facility installations shall be in compliance with all relevant legal requirements for connecting the Communication Facility to electricity and telecommunications service. City is not responsible for providing electricity or transport connectivity to Licensee.

SECTION 12. EMERGENCY CONTACTS

- (a) **Coordination of Emergency Events** – In case of an emergency due to interference, failure of traffic light signal system, or any unforeseen events, Licensor will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. Licensor will make every reasonable effort to coordinate its emergency response with the Licensee. To that end, the Licensor will use the following emergency contacts: The Licensee's network operations center may be reached 24/7 at (877) 244-7889.
- (b) **Licensee's Duty to Maintain Current Emergency Contacts** – Licensee will maintain the emergency contact information current at all times with the City Representative.
- (c) **Licensee's Response to Network Emergency** - In case of a network emergency, Licensee may access its Communication Facility without first obtaining a ROW Permit provided Licensee has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, Licensee shall conduct its activities within the Rights-of-Way in such a manner as to protect public and private property. Licensee will make every reasonable effort

to coordinate its emergency response with the Licensor. To that end, prior to entering the Rights-of-Way, Licensee will contact the City Representative and give notice to Licensor of the network emergency and an estimated time period to address the situation.

- (d) **Licensor's Duty to Maintain Emergency Contacts** – Licensor will maintain the emergency contact information current at all times with Licensee.

SECTION 13. INDEMNITY

- (a) **General Indemnity Clause** – Licensee covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, agents and representatives of the City, individually and collectively (“Indemnitees”), from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City arising out of a third-party claim to the extent arising from any negligent acts or omissions of Licensee, any agent, officer, director, representative, employee, consultant or subcontractor of Licensee, or their respective officers, agents employees, directors or representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability arising from the negligence of the City or an Indemnitee. **IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH APPLICABLE LAW, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW.**
- (b) **Licensor's Duty to Notify Licensee of Claims** – The City shall give prompt written notice to Licensee of any claim for which the City seeks indemnification. Licensee shall have the right to investigate, defend, and compromise these claims with prompt notice to the City attorney. Said approval shall not be unreasonably withheld, delayed or conditioned.
- (c) **Licensor's Consent to Settle Claims** – Licensee may not settle any claim subject to this Section without the consent of City, unless (i) the settlement will be fully funded by Licensee, and (ii) the proposed settlement does not contain an admission of liability or wrongdoing by any elected officials, employees, officers, directors, volunteers or representatives of City. The City's withholding its consent as

allowed in the preceding sentence does not release or impair Licensee of any obligations under this Section. Licensee must give City at least twenty (20) days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind City must first be approved by the City.

- (d) **General Limitation** – Neither party will be liable under this Agreement for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

SECTION 14. INSURANCE REQUIREMENTS

- (a) Prior to the commencement of any work under this Agreement, the Licensee shall furnish copies of all required certificate(s) of insurance to the City Representative. The City shall have no duty to pay or perform under this Agreement until such certificate has been received by the City.
- (b) City reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when reasonably determined necessary by the City based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such review and modification shall not occur more frequently than every five (5) years.
- (c) The Licensee’s financial integrity is of interest to the City; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Licensee’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Wisconsin and with an A.M. Best’s rating of no less than A-VII, in the following types and for an amount not less than the amount listed below:

Type of Coverage	Amounts
1. Workers’ Compensation	Statutory
2. Employers’ Liability	\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and General Aggregate limit of \$2,000,000

c. Products/complete operations	
d. Property damage	
4. Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

- (e) The Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, and elected representatives as additional insureds, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies.
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
 - Upon receipt of notice from its insurer, Licensee will provide Licensor with thirty (30) days prior written notice of cancellation.
- (f) Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend the Licensee's performance should there be a lapse in coverage at any time during this Agreement.
- (g) In addition to any other remedies the City may have upon the Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the Licensee to stop work hereunder, and/or withhold any payment(s) which become due to the Licensee hereunder until the Licensee demonstrates compliance with the requirements hereof.
- (h) Nothing herein contained shall be construed as limiting in any way the extent to which the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee's or its subcontractors' performance of the work covered under this Licensee Agreement.
- (i) It is agreed that the Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement.

- (j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

SECTION 15. ADMINISTRATION OF LICENSE

- (a) **Administration of License by City Officials** – The City Representative is the principal City person responsible for the administration of this Agreement. The Rights-of-Way Manager shall review the operations of Licensee in the Rights-of-Way under this Agreement and the Rights-of-Way Regulations.
- (b) **Licensee’s Duty to Communicate with City Officials** – Licensee shall communicate with the Rights-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of Licensee’s Communication Facility in the Rights-of-Way and provide periodic deployment plans to the Rights-of-Way Manager and the City Representative.
- (c) **Notice** – Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

If to Licensor: City of Chippewa Falls Director of Public Works 30 W. Central Street Chippewa Falls, Wi 54729	With a copy to: City of Chippewa Falls Mayor 30 W. Central Street Chippewa Falls, Wi 54729
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If to Licensee: Wisconsin Technology Networking, LLC 2220 University Drive Newport Beach, CA 92660 Attention: Asset Management	With a copy to: Wisconsin Technology Networking, LLC 2220 University Drive Newport Beach, CA 92660 Attention: Legal Department
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SECTION 16. ASSIGNMENT OF LICENSE

- (a) **Limited Right of Assignment** – This Agreement and each Supplemental License under it may be sold or assigned by Licensee without any approval or consent of the Licensor to any entity which acquires all or substantially all of Licensee’s assets in the market defined by the FCC in which the Right-of-Way is located by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this Agreement. Licensee shall provide the City Representative notice of any such merger, acquisition or other business reorganization within a reasonable period of time after the consummation thereof. This Agreement and each Supplemental License under it may be sold or assigned by Licensee to Licensee’s principal, affiliates, subsidiaries of its principal without any approval or consent of the Licensor, but with prior written notice to Licensor, provided such entity holds a certificate of public convenience and necessity issued by the Wisconsin Public Service Commission. As to other parties, this Agreement and each Supplemental License may not be sold or assigned without the written consent of the Licensor, which shall not be unreasonably withheld. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder.
- (b) **Licensee’s Right to Grant Security Interest in License** – Additionally, Licensee may mortgage or grant a security interest in this Agreement and the Communication Facility, and may assign this Agreement and Communication Facility to any mortgagees or holders of security interest, including their successors or assigns (collectively “Mortgagees”), provided such Mortgagees’ interests in this Agreement are subject to all of the terms and provisions of this Agreement. In such event, City shall execute such consent to financing as may reasonably be required by Mortgagees.

SECTION 17. FUTURE CONTINGENCY

- (a) **Renegotiation for Incapacity of Contract** – Notwithstanding anything contained in this Agreement to the contrary, in the event that this Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, the Licensee and Licensor shall meet and negotiate an amended Agreement that is in compliance with the authority’s decision or enactment and, unless explicitly prohibited.

SECTION 18. AGREEMENT VIOLATIONS LEADING TO TERMINATION

- (a) **Events of Termination** – This Agreement may be terminated before the expiration date of the Term on written notice by City to Licensee, if Licensee materially breaches any provision of this Agreement and such breach is not cured by Licensee within sixty (60) days after Licensee’s receipt of written notice of such breach from the City. Licensee shall not be excused from complying with any of the terms and conditions of this Agreement by the previous failure of the City to insist upon or seek compliance with such terms and conditions.
- (b) **No Waiver of Duties** – Termination of this Agreement does not relieve Licensee from the obligation (i) to pay Annual License Fees accrued and owing to Licensor under the Agreement at the time of termination, or (ii) concerning any claim for damages against Licensee under this Agreement. Licensor’s rights, options, and remedies under this Agreement are cumulative, and no one of them is exclusive of the other. Licensor may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this Agreement. No waiver by Licensor of a breach of any covenant or condition of this Agreement is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this Agreement.

SECTION 19. GOVERNING LAW, JURISDICTION AND VENUE

- (a) **Governing Law** – This Agreement is passed in accordance with the constitutions, statutes, ordinances, and regulations of the United States, the State of Wisconsin, and the City of Chippewa Falls in effect on the effective date of this Agreement, and as such Laws may be subsequently amended.
- (b) **Compliance with Local Ordinances** – Nothing in this Agreement shall be interpreted to limit the authority of the City to adopt, from time to time, ordinances, rules and regulations that are generally applicable to occupants of the Rights-of-Way that it determines necessary in the exercise of City’s governmental powers. Licensee shall abide by any Rights-of-Way Regulations that do not conflict or are otherwise preempted by state or federal law.
- (c) **Enforcement of Local Regulations** – Licensor expressly reserves the right to enforce requirements for ministerial issuance of ROW Permits. It is understood and agreed that Licensee is responsible for obtaining all such permits necessary to install, maintain and operate its Communication Facility.
- (d) **Change of Law** - If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, “Laws”) that govern any aspect of the rights or obligations of the Parties under this Agreement shall change after the Effective Date and such change makes any aspect

of such rights or obligations inconsistent with the then-effective Laws, then the Parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

(e) **Jurisdiction and Venue** – THE PROVISIONS OF THE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF WISCONSIN, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN THE COUNTY IN WHICH THE CITY IS LOCATED. THEREFORE, IN THE EVENT ANY COURT ACTION IS BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS AGREEMENT, THE COURTS OF SUCH COUNTY SHALL HAVE JURISDICTION OVER THE DISPUTE AND VENUE SHALL BE IN SUCH COUNTY.

SECTION 20. NON-DISCRIMINATION

(a) **Non-Discrimination** – Licensee agrees not to engage in employment practices that discriminate against any employee or applicant for employment based on race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this Section occurs, Licensee, upon written notification by City, shall commence compliance procedures within thirty (30) days.

SECTION 21. MISCELLANEOUS PROVISIONS

(a) **Waiver** – None of the material provisions of this Agreement may be waived or modified except expressly in writing signed by the Licensee and Licensor. Failure of either Party to require the performance of any term in this Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

(b) **Severability** – If any clause or provision of the Agreement is illegal, invalid, or unenforceable under present or future Laws effective during the Term, then and in that event it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

(c) **Captions** – The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Agreement.

- (d) **Extent of Agreement** – This Agreement, together with its attached exhibits and the authorizing ordinance, if any, embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to this Agreement.
- (e) **Authority** – The signer of this Agreement for the Licensee and the City hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of the Licensee or the City respectively.
- (f) **Non-Waiver of Rights** – By entering this Agreement, neither Licensor nor Licensee has waived any rights either Party may have under applicable state and federal law pertaining to the provision of Communication Service or Licensee’s access rights concerning the Rights-of-Way.
- (g) **Force Majeure** – In the event a Party’s performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented or impaired due to a force majeure event beyond such Party’s reasonable control, such inability to perform will be deemed to be excused and no penalties or sanctions will be imposed as a result thereof. For purposes of this subsection, “force majeure” means an act of God, a natural disaster or an act of war (including terrorism), civil emergencies and labor unrest or strikes, untimely delivery of equipment, pole hits, and unavailability of essential equipment, and/or materials, and any act beyond the Party’s reasonable control. It also includes an explosion, fire or other casualty or accident, which is not the result of gross negligence, an intentional act or misconduct on the part of the Party.
- (h) **Technical Amendments** – Other than proposed substantive contractual amendments requested under Section 4, the Parties may mutually agree to make technical amendments to the Agreement and its exhibits without the approval of the City that would not alter the obligations and responsibilities of the Parties under the Agreement, in order to address advances and/or innovations in wireless technologies and equipment.
- (i) **No Partnership or Joint Venture** – The relationship between Licensor and Licensee is at all times solely that of licensor and licensee, not that of partners or joint venturers.
- (j) **Effect of Bankruptcy** – Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver is an event of default.
- (k) **Counterparts** – This Agreement may be executed in multiple counterparts, each of which is an original. Regardless of the number of counterparts, they constitute only

one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all Parties.

- (1) **Further Assurances** – The Parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the Parties as contained in this Agreement.

EXECUTED and AGREED.

**CITY OF CHIPPEWA
FALLS**

**WISCONSIN TECHNOLOGY
NETWORKING, LLC**

(Signature)

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

COMMUNICATION SITE APPLICATION

Applicant: _____ Date: _____

Licensee: _____ Application/License#: _____

Licensee ID #	Site	Communication Coordinates	Site	GIS	Type of Communication Facility
					[Wireless Communication Equipment] [Wireless Backhaul Equipment] [Landline Backhaul Equipment]

If Wireless Communication Equipment or Wireless Backhaul Equipment:

Pole Type	Pole Alteration	Attachment Height	Attachment Weight	Attachment Dimensions	Location of Equipment Shelter
[City Pole] [Third-Party Pole] [Licensee Pole] [Not Applicable/Needed]	[Pole Reinforcement] [Pole Replacement] [New Pole] [Not Applicable/Needed]				[Installed on Pole] [Installed in Ground (Vault)] [Other Location (Requires City Representative Approval)] [Not Applicable/Needed]

APPLICANT SHALL PROVIDE THE FOLLOWING IF/AS APPLICABLE:

- Site plan and engineering design and specifications for installation of Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling. Where applicable, the design documents should include specifications on design, pole modification, and ADA compliance.
- For City poles, include documentation from the City verifying that the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of Communication Facility. If pole reinforcement or replacement is warranted, the design documents should include the proposed pole modification.
- For new pole installations, include documentation from the Rights-of-Way Manager verifying that the pole location in the Rights-of-Way is eligible for installation.
- If the proposed installation includes a new pole, provide design and specification drawings for the new pole.
- If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- All necessary permits and letters of authorization from all affected parties.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

THE CITY WILL PROCESS THIS APPLICATION WITHIN 30 DAYS OF RECEIPT DATE, UNLESS AN AGREEMENT IS EXECUTED BY APPLICANT AND THE CITY REPRESENTATIVE TO EXTEND THE APPROVAL DATE.

APPLICANT REPRESENTATIVE: _____

PRINT NAME: _____

TITLE: _____

----- **FOR CITY USE ONLY** -----

RECEIPT DATE: _____ APPLICATION NO.: _____

APPROVED BY: _____

PRINT NAME: _____

TITLE: _____

APPROVAL DATE: _____

**EXHIBIT B
Supplemental License Form**

**Supplemental License No. _____
For Communication Facility Installation**

This Supplemental License is entered on this ____ day of _____, _____, between the City of Chippewa Falls, acting through its City Representative, or his/her designee, (“Licensor”) and Wisconsin Technology Networking, LLC, a Delaware limited liability company (“Licensee”).

1. Overview of Supplemental License – This Supplemental License applies to the Communication Sites described below.

Authorizing Agreement:

License: Master License Agreement for Use of Public Rights-of-Way

Licensor: City of Chippewa Falls

Licensee: Wisconsin Technology Networking, LLC

Initial Aggregate Annual License Fees: _____

Commencement Date: _____

Term: Term of 25 years subject to the Master License Agreement.

Licensee ID #	Site	Communication Coordinates	Site	GIS	Type of Communication Facility
					[Wireless Communication Equipment] [Wireless Backhaul Equipment] [Landline Backhaul Equipment]

If Wireless Communication Equipment or Wireless Backhaul Equipment:

Pole Type	Pole Alteration	Attachm ent Height	Attachm ent Weight	Attachme nt Dimension s	Location of Equipment Shelter
[City Pole] [Third-Party Pole] [Licensee Pole] [Not Applicable/Needed]	[Pole Reinforcement] [Pole Replacement] [New Pole] [Not Applicable/Needed]				[Installed on Pole] [Installed in Ground (Vault)] [Other Location (Requires City Representative Approval)] [Not Applicable/Needed]

2. **Source of Authority** – This Supplemental License is authorized and executed pursuant to the terms and conditions of the “Master License Agreement between the City and Licensee for the Use of Public Rights-of-Way,” as it may be amended by the Parties during its Term (“Master License Agreement”). All of the terms and conditions of the Master License Agreement, including any future amendments, are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master License Agreement. Capitalized terms used in this Supplemental License shall have the same definitions and meanings ascribed to them in the Master License Agreement, unless otherwise indicated herein.

3. **Approval Process** – This Supplemental License arises from and is part of the approval process associated with the Communication Site Application approved by the City Representative on _____. The Communication Site Application, including all attachments, is incorporated as Exhibit 1 and made a part hereto. If not attached, the Communication Site Application is hereby incorporated herein by reference and made a part hereof without the necessity of repeating or attaching it.

4. Scope of License – This Supplemental License is limited to the Communication Facility installation(s) referenced in the Communication Site Application associated with this Supplemental License.

5. Conflict in Interpretation – Nothing in this Supplemental License is intended to grant Licensee any rights or privileges beyond those addressed in the Master License Agreement. In the event of any conflict in contractual interpretation between this Supplemental License and the Master License Agreement, the terms and conditions of the Supplemental License shall govern, provided however that any future amendments or modifications to the Master License Agreement shall simultaneously apply and serve to amend or modify this Supplemental License without the need by either Party to provide notice of such to the other.

6. Site Specific Conditions – All site specific conditions shall be addressed in the Communication Site Application associated with this Supplemental License.

7. Site Modifications – Prior to making any post-installation future material modifications to a Communication Site, other than maintenance and repair of site specific Communication Facility as further provided in the Master License Agreement, Licensee shall file a Communication Site Application with the City Representative describing the proposed modifications. The City Representative, or his/her designee, shall review the Communication Site Application pursuant to the terms and conditions in the Master License Agreement, and if approved such Communication Site Application shall be attached as Exhibit 2 and made a part hereto. Any additional site modifications shall be incorporated hereto in the same manner.

8. License Fee – The aggregate Annual License Fees applicable to this Supplemental License, as summarized in Section 1 above, shall be calculated based on the number of applicable Communication Facility as set forth in the Master License Agreement, payable by Licensee as provided therein.

9. Commencement Date – The Commencement Date for this Supplemental License shall be the same date that the Communication Site Application associated with this Supplemental License, which is hereby approved by the City Representative.

10. Term – The term for this Supplemental License, as described in Section 1 above, is set forth in the Master License Agreement.

NOW THEREFORE, the Parties hereto by the signature of their respective representatives hereby agree to enter into this Supplemental License.

LICENSOR

CITY OF CHIPPEWA FALLS

By: _____
Printed Name: _____
Title: _____
Date: _____

LICENSEE

WISCONSIN TECHNOLOGY NETWORKING, LLC

By: _____
Printed Name: _____
Title: _____
Date: _____