

# City of Rock Falls

603 W. 10<sup>th</sup> Street  
Rock Falls, IL 61071-2854

*Mayor*  
William B. Wescott  
815-380-5333

*City Administrator*  
Robbin Blackert  
815-564-1366



*City Clerk*  
815-622-1100  
Ext. 4

*City Treasurer*  
Kay Abner  
815-622-1100

## Rock Falls City Council Agenda

December 1, 2020  
6:30 p.m.

Governor Pritzker's Executive Orders No. 2020-07 and No. 2020-18, suspends the in-person attendance requirement for members of the public body and allows for remote participation. In light of the current COVID-19 public health emergency and the prohibition of public gatherings of 10 or more, the City Council has chosen to conduct the City Council Meeting remotely.

If you would like to listen to the meeting, please go to <https://zoom.us/j/94709960331>, webinar passcode is 123456.

### **To submit questions or comments for the Audience Request portion of the meeting:**

Submit your questions to [meeting@rockfalls61071.com](mailto:meeting@rockfalls61071.com) prior to December 1, 2020 at 3:00 p.m. and your questions and/or comments, if appropriate, will be read during the meeting and addressed at that time.

### **Call to Order at 6:30 p.m.**

### **Roll Call**

### **Audience Requests**

### **Community Affairs**

Bethany Bland, President/CEO, Rock Falls Chamber of Commerce

### **Consent Agenda**

1. Approval of the Minutes of the November 17, 2020 Regular Council Meeting
2. Approval of bills as presented

### **Ordinances 2<sup>nd</sup> Reading and Adoption:**

1. Ordinance 2020-2510 - Tax Levy for the Fiscal Year beginning May 1, 2020 and ending April 30, 2021
2. Ordinance 2020-2511 - Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$5,300,000 General Obligation Bonds (Alternate Revenue Sources), Series 2017

3. Ordinance 2020-2512 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$2,115,000 General Obligation Bonds (Alternate Revenue Sources), Series 2016
4. Ordinance 2020-2513 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$9,200,000 General Obligation Bonds (Electric System Alternate Revenue Source), Series 2018A
5. Ordinance 2020-2514 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$1,200,000 General Obligation Bonds (Waterworks System Alternate Revenue Source), Series 2018B
6. Ordinance 2020-2515 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$1,200,000 General Obligation Bonds (Sewerage System Alternate Revenue Source), Series 2018C

## **City Administrator Robbin Blackert**

### **Information/Correspondence**

James Reese, City Attorney

Brian Frickenstein, City Engineer

### **Alderman Reports/Committee Chairman Requests**

#### **Ward 1**

Alderman Bill Wangelin

Alderman Gabriella Palmer – Finance/Insurance/Investment Committee Chairman

#### **Ward 2**

Alderman Brian Snow – Building Code Committee Chairman

Alderman Casey Babel

#### **Ward 3**

Alderman Jim Schuneman – Utility Committee Chairman/Tourism Committee Chairman

1. Approve purchase of 15kV Padmount Distribution Switchgear for the Schmitt Addition Lift Station from RESCO Rural Electric Supply Corp, PO Box 44430, Madison WI 53744 in the amount of \$68,845.00.
2. Approve the Pole Attachment Agreement with SurfAir
3. Approve a Dark Fiber Lease Agreement with Syneo
4. Mike Gaulrapp – Intent to Renew Cash Farm Lease dated April 21, 2020 with a request of a reduction in the per acre rental amount from \$300.00 per acre to \$225.00 per acre

Alderman Rod Kleckler – Public Works/Public Property Committee Chairman

#### **Ward 4**

Alderman Lee Folsom – Police/Fire Committee Chairman

Alderman Violet Sobottka – Ordinance/License/Personnel/Safety Committee Chairman

1. Approval to hire Jeremiah Ludewig for the Journeyman Lineman position in the Electric Department.
2. Approval to hire Mason Rhodes for the Apprentice Lineman position in the Electric Department.

### **Mayor's Report**

1. Accept the resignation of John Espinoza from his service to the Police and Fire Commission effective immediately with regret.

2. Appoint Mike Kuelper to the Police and Fire Commission effective immediately through May 2022

## **Adjournment**

Next City Council meeting – December 15, 2020 at 6:30 p.m.

Posted: November 25, 2020

Michelle Conklin, Deputy City Clerk

The City of Rock Falls is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with Disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in the meeting, or who have questions regarding the accessibility of the meeting or the facilities, are requested to contact Mark Searing, ADA Coordinator, at 1-815-622-1108 promptly to allow the City of Rock Falls to make reasonable accommodations within 48 hours of the scheduled meeting.

REGULAR MEETING MINUTES OF THE MAYOR AND ALDERMEN  
OF THE CITY OF ROCK FALLS

November 17, 2020

The regular meeting of the Mayor and City Council of Rock Falls, Illinois was held electronically (via Zoom) due to the COVID-19 Pandemic and Region 1 being placed into Tier 2 Enhanced Mitigation Measures. The meeting was called to order at 6:30 p.m. November 17, 2020 by Mayor Wescott.

Deputy City Clerk Michelle Conklin called the roll. A quorum was present including Mayor Wescott, Aldermen Palmer, Wangelin, Snow, Babel, Schuneman, Kleckler and Sobottka. Alderman Folsom being absent. In addition, Attorney Matt Cole, Attorney James Reese and City Administrator Robbin Blackert were present.

Consent Agenda items 1 and 2 were read aloud by Deputy City Clerk Michelle Conklin.

1. Approval of the Minutes of the November 3, 2020 Regular City Council Meeting
2. Approval of bills as presented

A motion was made by Alderman Snow and second by Alderman Wangelin to approve Consent Agenda items 1 and 2.

**Vote 7 aye, motion carried.**

A motion was made by Alderman Schuneman and second by Alderman Palmer to approve first reading of Ordinances:

1. Ordinance 2020-2510 – Tax Levy for the Fiscal Year beginning May 1, 2020 and ending April 30, 2021
2. Ordinance 2020-2511 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$5,300,000 General Obligation Bonds (Alternate Revenue Sources), Series 2017
3. Ordinance 2020-2512 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$2,115,000 General Obligation Bonds (Alternate Revenue Sources), Series 2016
4. Ordinance 2020-2513 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$9,200,000 General Obligation Bonds (Electric System Alternate Revenue Source), Series 2018A
5. Ordinance 2020-2514 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$1,200,000 General Obligation Bonds (Waterworks System Alternate Revenue Source), Series 2018B
6. Ordinance 2020-2515 – Abating the Tax Heretofore Levied for the Year 2020 to Pay Debt Service on \$1,200,000 General Obligation Bonds (Sewerage System Alternate Revenue Source), Series 2018C

**Viva Voce Vote, motion carried. (7aye)**

A motion was made by Alderman Sobottka and second by Alderman Wangelin to approve Ordinance 2020-2503 – Amending Chapter 18, Article IV, Section 18-86 of the Rock Falls Municipal Code Removing One-Way Street Designation of Alley Between E. 5<sup>th</sup> Street and Dixon Avenue.

**Vote 7 aye, motion carried.**

A motion was made by Alderman Sobottka and second by Alderman Babel to approve Ordinance 2020-2504 – Amending Chapter 18, Article VI, Section 18-152 of the Rock Falls Municipal Code

Removing No Parking Designation Along Southerly Portions of East 2<sup>nd</sup> Street. **Vote 7 aye, motion carried.**

A motion was made by Alderman Sobottka and second by Alderman Palmer to approve Ordinance 2020-2505 – Amending Chapter 16, Article V Authorizing the Delivery and Carry Out of Alcohol by Licensed Establishments.

**Vote 5 aye, 1 nay (Kleckler), 1 recuse (Snow), Mayor Wescott voted aye, motion carried.**

A motion was made by Alderman Schuneman and second by Alderman Snow to approve Ordinance 2020-2506 – Approving Grant of Utility Easements to Commonwealth Edison.

**Vote 7 aye, motion carried.**

A motion was made by Alderman Snow and second by Alderman Kleckler to approve Ordinance 2020-2507 – Authorizing the Publication of Notice of the Invitation to Bid for the Sale of Real Property 710 ½ Avenue A, Rock Falls, IL 61071 PIN # 11-27-310-015.

**Vote 7 Aye, motion carried.**

A motion was made by Alderman Snow and second by Alderman Kleckler to approve Ordinance 2020-2508 – Authorizing the Publication of Notice of the Invitation to Bid for the Sale of Real Property 1015 9<sup>th</sup> Avenue, Rock Falls, IL 61071 PIN # 11-33-128-008.

**Vote 7 aye, motion carried.**

A motion was made by Alderman Snow and second by Alderman Sobottka to approve Ordinance 2020-2509 – Authorizing the Publication of Notice of the Invitation to Bid for the Sale of Real Property 614 3<sup>rd</sup> Avenue, Rock Falls, IL 61071 PIN # 11-28-436-020.

**Vote 7 aye, motion carried.**

City Administrator Blackert explained that at the time the Contract was signed between the City and Moring Disposal in 2018, Moring Disposal was making money on the recyclables and now there is no market. Moring is having to pay to dispose of the recyclables they are picking up and it is going to cost an additional \$0.69 per household, per month which would be passed on to the residents. At this time the recycling program will be suspended until June 1, 2021 or at such time as the market becomes available for recycling.

A motion was made by Alderman Kleckler and second by Alderman Wangelin to approve the Acknowledgment between the City of Rock Falls and Moring Disposal, Inc. to suspend the recycling program in the City of Rock Falls until June 1, 2021 or until such time that the market becomes available for the disposal of recyclables. The City and Moring Disposal will review the marketability of recyclables every 6 months.

**Vote 5 aye, 2 nay (Palmer and Babel), motions carried.**

A motion was made by Alderman Kleckler and second by Alderman Sobottka to approve a Resolution of Support for our local Liquor Commissioner in his actions of enforcing the COVID 19 Mitigations.

**Vote 6 aye, 1 recuse (Snow), motion carried.**

Mayor Wescott updated the Council on Governor Pritzker's Tier 3 Mitigations that will go into effect on November 20, 2020. There was a 10 minutes conference call with the Governor that was not helpful, no one was allowed to ask questions. There have been a lot of phone calls wanting to know why we are not doing anything as a city for the bars and restaurants that are not adhering to the Tier 2 Mitigations. By State Statute, the only thing that we can do is if the establishment has a liquor license we can suspend that license for 7 days and have a hearing. There is nothing that

the City can do with restaurants as that is the Health Department's license. At this time the Health Department does not have the authority or the staffing to deal with this. The only other thing that the city could do by State Statute is have the Mayor to declare an emergency and this is not an avenue that we would like to follow. The Governor's Office says that we can enforce the mitigation efforts so we have asked for information on how we can do this.

A motion was made by Alderman Snow and second by Alderman Wangelin to Adjourn.  
**Viva Voce Vote, motion carried. (7:05 p.m.)**

  
Michelle K. Conklin, Deputy City Clerk

CITY OF ROCK FALLS

Rock Falls, Illinois 12/01/2020

To the Mayor and City Council of the City of Rock Falls, Your Committee on Finance would respectfully report that they have examined the following bills presented against the City, and have found the same correct and would recommend the payment of the various amounts to the several claimants as follows:

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Tourism		1405.68
General Fund		8475.92
TIF-Downtown Redevelopment		18.42
Electric		13733.85
IT Fund		550.00
Fiber Optic Broadband	Taxable	2050.08
Sewer		3889.96
Water		8313.86
Garbage Fund		43150.12
Customer Service Center		18.65
Tobacco Grant		360
Motor Fuel Tax Fund		1459.80
Customer Utility Deposit		\$314.43
Drug Fund		\$27,758.90
		\$111,499.67

Alderman Kleckler  
Alderman Wangelin  
Alderman Palmer

DATE: 11/16/20  
TIME: 08:48:30  
ID: AP443000.WOW

CITY OF ROCK FALLS  
DEPARTMENT SUMMARY REPORT

PAGE: 1

INVOICES DUE ON/BEFORE 11/16/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
DRUG FUND			
56	DRUG ABUSE		
5110	KUNES COUNTRY AUTO GROUP	2,325.77	27,758.90
	DRUG ABUSE		27,758.90
	TOTAL ALL DEPARTMENTS		27,758.90

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CITY OF ROCK FALLS  
DEPARTMENT SUMMARY REPORT

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INVOICES DUE ON/BEFORE 11/16/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
GENERAL FUND			
04	BUILDING		
5253	WEX BANK	33,941.86	138.12
	BUILDING		138.12
06	POLICE		
5253	WEX BANK	33,941.86	2,060.07
	POLICE		2,060.07
10	STREET		
5253	WEX BANK	33,941.86	585.17
	STREET		585.17
13	FIRE		
5253	WEX BANK	33,941.86	481.19
	FIRE		481.19
ELECTRIC FUND			
20	OPERATION & MAINTENANCE		
5253	WEX BANK	33,941.86	1,168.15
	OPERATION & MAINTENANCE		1,168.15
FIBER OPTIC BROADBAND/TAXABLE			
23	FIBER OPTIC BROADBAND/TAXABLE		
5253	WEX BANK	33,941.86	57.67
	FIBER OPTIC BROADBAND/TAXABLE		57.67
SEWER FUND			
38	OPERATION & MAINTENANCE		

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CITY OF ROCK FALLS  
DEPARTMENT SUMMARY REPORT

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INVOICES DUE ON/BEFORE 11/16/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
SEWER FUND			
38	OPERATION & MAINTENANCE		
5253	WEX BANK	33,941.86	442.58
	OPERATION & MAINTENANCE		442.58
WATER FUND			
48	OPERATION & MAINTENANCE		
5253	WEX BANK	33,941.86	361.65
	OPERATION & MAINTENANCE		361.65
	TOTAL ALL DEPARTMENTS		5,294.60

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CITY OF ROCK FALLS  
 DEPARTMENT SUMMARY REPORT

INVOICES DUE ON/BEFORE 11/20/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
TOURISM			
05	TOURISM		
200	COM ED	1,001.04	21.11
4501	SAUK VALLEY AREA	100.00	500.00
5015	CARD SERVICE CENTER	15,294.03	379.24
5032	COMCAST	2,907.96	5.33
753	ROCK FALLS CHAMBER OF COMMERCE	5,000.00	500.00
	TOURISM		1,405.68
GENERAL FUND			
01	ADMINISTRATION		
5015	CARD SERVICE CENTER	15,294.03	54.99
5032	COMCAST	2,907.96	5.33
	ADMINISTRATION		60.32
02	CITY ADMINISTRATOR		
5032	COMCAST	2,907.96	2.66
	CITY ADMINISTRATOR		2.66
04	BUILDING		
5015	CARD SERVICE CENTER	15,294.03	102.91
5032	COMCAST	2,907.96	10.66
	BUILDING		113.57
05	CITY CLERK'S OFFICE		
4664	STAPLES ADVANTAGE	468.00	109.99
5015	CARD SERVICE CENTER	15,294.03	15.93
5032	COMCAST	2,907.96	10.66
T0001463	MICHELLE CONKLIN		31.39
	CITY CLERK'S OFFICE		167.97
06	POLICE		

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CITY OF ROCK FALLS  
DEPARTMENT SUMMARY REPORT

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INVOICES DUE ON/BEFORE 11/20/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
GENERAL FUND			
06	POLICE		
194	GRUMMERT'S HARDWARE - R.F.	3,718.49	2.58
2380	AUTOZONE	226.76	48.92
332	FYR-FYTER, INC.	1,121.41	157.60
350	GISI BROS. INC.	6,638.89	90.00
4767	DOUG WOLBER		118.87
4796	VERIZON WIRELESS	9,071.73	284.07
5015	CARD SERVICE CENTER	15,294.03	-11.13
5032	COMCAST	2,907.96	82.51
	POLICE		773.42
10	STREET		
1853	MOORE TIRES INC.	5,836.55	97.16
194	GRUMMERT'S HARDWARE - R.F.	3,718.49	33.88
4207	O'REILLY AUTOMOTIVE INC	2,249.46	168.52
4656	THOMPSON TRUCK AND TRAILER	2,988.08	54.16
5032	COMCAST	2,907.96	5.33
5141	CINTAS CORPORATION	898.06	39.22
5306	RNOW, INC		37.10
55	ARAMARK UNIFORM SERVICES, INC.	5,511.23	188.28
651	NICOR	15,148.86	489.51
852	S.J. SMITH CO INC	337.82	152.38
T0004785	CHRIS THIELSEN		200.00
T0005346	ESSENCE CHEMICAL COMPANY	5,484.74	842.99
	STREET		2,308.53
12	PUBLIC PROPERTY		
5015	CARD SERVICE CENTER	15,294.03	186.29
5176	DIRECT IN SUPPLY	456.42	257.01
	PUBLIC PROPERTY		443.30
13	FIRE		
194	GRUMMERT'S HARDWARE - R.F.	3,718.49	92.97
2776	EAGLE ENGRAVING INC	9.80	31.20
4207	O'REILLY AUTOMOTIVE INC	2,249.46	17.74
5015	CARD SERVICE CENTER	15,294.03	1,181.04

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CITY OF ROCK FALLS  
 DEPARTMENT SUMMARY REPORT

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INVOICES DUE ON/BEFORE 11/20/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
GENERAL FUND			
13	FIRE		
5032	COMCAST	2,907.96	18.65
	FIRE		1,341.60
TIF - DOWNTOWN REDEVELOPMENT			
19	DOWNTOWN REDEVELOPMENT		
194	GRUMMERT'S HARDWARE - R.F.	3,718.49	18.42
	DOWNTOWN REDEVELOPMENT		18.42
ELECTRIC FUND			
20	OPERATION & MAINTENANCE		
194	GRUMMERT'S HARDWARE - R.F.	3,718.49	62.48
440	IMUA		600.00
4626	ENGEL ELECTRIC CO.	10,083.06	1,200.00
5008	POWER SYSTEM ENGINEERING INC	47,407.90	6,269.78
5015	CARD SERVICE CENTER	15,294.03	1,020.31
5032	COMCAST	2,907.96	26.65
5141	CINTAS CORPORATION	898.06	43.58
5210	RITZ SAFETY LLC	9,422.21	731.57
651	NICOR	15,148.86	291.03
T0004412	PHYSICIANS IMMEDIATE CARE		93.00
T0005385	PRESCOTT BROTHERS INC	670.00	2,227.30
	OPERATION & MAINTENANCE		12,565.70
IT FUND			
22	IT FUND		
5203	TRIMBLE INC.		550.00
	IT FUND		550.00
FIBER OPTIC BROADBAND/TAXABLE			
23	FIBER OPTIC BROADBAND/TAXABLE		
5015	CARD SERVICE CENTER	15,294.03	1,992.41
	FIBER OPTIC BROADBAND/TAXABLE		1,992.41

INVOICES DUE ON/BEFORE 11/20/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
SEWER FUND			
38	OPERATION & MAINTENANCE		
200	COM ED	1,001.04	152.18
4796	VERIZON WIRELESS	9,071.73	163.34
482	JOHNSON OIL CO	2,162.58	152.20
5032	COMCAST	2,907.96	18.65
5131	METROPOLITAN INDUSTRIES, INC.	2,701.00	1,580.50
5139	SUBURBAN LABORATORIES, INC.	1,610.00	510.00
5141	CINTAS CORPORATION	898.06	63.51
5176	DIRECT IN SUPPLY	456.42	257.00
5203	TRIMBLE INC.		550.00
	OPERATION & MAINTENANCE		3,447.38
WATER FUND			
40	WATER		
4141	JEFF BEHRENS EXCAVATING	6,335.00	900.00
	WATER		900.00
48	OPERATION & MAINTENANCE		
194	GRUMMERT'S HARDWARE - R.F.	3,718.49	22.65
2939	FURR EXCAVATING, INC.		1,440.00
4141	JEFF BEHRENS EXCAVATING	6,335.00	1,960.00
4361	FERGUSON WATERWORKS #2516	52,519.13	2,531.08
5015	CARD SERVICE CENTER	15,294.03	126.94
5032	COMCAST	2,907.96	13.32
5141	CINTAS CORPORATION	898.06	31.86
5203	TRIMBLE INC.		550.00
55	ARAMARK UNIFORM SERVICES, INC.	5,511.23	108.36
T0004412	PHYSICIANS IMMEDIATE CARE		268.00
	OPERATION & MAINTENANCE		7,052.21
GARBAGE FUND			
50	GARBAGE		
4446	MORING DISPOSAL, INC.	264,890.16	43,150.12
	GARBAGE		43,150.12

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CITY OF ROCK FALLS  
DEPARTMENT SUMMARY REPORT

INVOICES DUE ON/BEFORE 11/20/2020

VENDOR #	NAME	PAID THIS FISCAL YEAR	AMOUNT DUE
-----			
CUSTOMER SERVICE CENTER			
51	CUSTOMER SERVICE CENTER		
5032	COMCAST	2,907.96	18.65
	CUSTOMER SERVICE CENTER		18.65
TOBACCO GRANT			
58	TOBACCO		
T0005393	KAST LASER CREATIONS		360.00
	TOBACCO		360.00
MOTOR FUEL TAX FUND			
65	MOTOR FUEL TAX		
5048	CIVIL MATERIALS	7,287.40	1,459.80
	MOTOR FUEL TAX		1,459.80
CUSTOMER UTILITY DEPOSITS			
75	CUSTOMER UTILITY DEPOSITS		
T0005392	PAMELA BOWMAN		73.91
T0005394	MARY JO FUNDERBERG		147.83
T0005395	MOLLY GUTHRIE		92.69
	CUSTOMER UTILITY DEPOSITS		314.43
	TOTAL ALL DEPARTMENTS		78,446.17

ORDINANCE NO. 2020-

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCK FALLS, ILLINOIS

SECTION I

That the following sums of money, or as much thereof as may be authorized by law, to defray expenses and liabilities of the City of Rock Falls, be and the same are hereby levied for the purposes specified against all taxable property in the City of Rock Falls for the Fiscal Year beginning May 1, 2020 and ending April 30, 2021.

	<u>Appropriated</u>	<u>Other Sources</u>	<u>Levied</u>
<b>Administration:</b>			
Elected Officials Salaries	48,000.00		
Mayor's Expenses	2,000.00		
Information Technology Expense	1,492.00		
Hotel/Motel Admin Fee Expense	1,500.00		
Print Pub Ordinance/Notice	200.00		
Codification of Ordinances	6,000.00		
Dues/Sub/Publications	1,500.00		
Office Expense	1,500.00		
Meetings/Seminars/Schools	2,500.00		
Telephone Expense	1,000.00		
Legal & Prof. Expense	68,560.00		
Auditing Expense	22,000.00		
Bad Debt Expense	1,000.00		
Insurance Exp. Employee	74,848.00		
Insurance Exp. - General	276,194.00		
Property Acquisition	55,336.00		
Miscellaneous Expense	1,000.00		
RF Chamber Gen. Ofc Expense	6,000.00		
Union Drainage Tax	5,000.00		
Contingency	57,563.00		
<b>Total Administration</b>	<u><u>\$633,193.00</u></u>	<u><u>\$430,477.51</u></u>	<u><u>\$202,715.49</u></u>
<b>City Administrator:</b>			
Salary/Wages	93,681.00		
Vehicle Allowance	1,200.00		
Office Expense	1,500.00		
Information Technology Expense	1,194.00		
Mtgs-Sem-Conf-School	1,000.00		
Telephone	1,054.00		
Insurance Expense Employee	21,956.00		
Miscellaneous Expense	250.00		
Contingency	12,184.00		
<b>Total City Administrator</b>	<u><u>\$134,019.00</u></u>	<u><u>\$134,019.00</u></u>	<u><u>\$0.00</u></u>
<b>Planning/Zoning:</b>			
Print/Publishing Ord/Notices	100.00		
Dues/Sub/Publications	275.00		
Postage & Office Supplies	750.00		
Meetings/Seminars/Conferences/Schools	450.00		
Legal & Professional Expense	2,500.00		
Miscellaneous Expense	50.00		
Contingency	413.00		
<b>Total Planning/Zoning</b>	<u><u>\$4,538.00</u></u>	<u><u>\$4,538.00</u></u>	<u><u>\$0.00</u></u>

**Building Department:**

Salary/Wages	168,349.00		
Dues/Subscriptions/Publications	1,400.00		
Office Expense	5,000.00		
Overtime	200.00		
Meetings/Seminars/Schools	1,500.00		
Vehicle Gas & Oil	1,000.00		
Vehicle Maint. & Operation	1,000.00		
Emergency Building Inspection	250.00		
Telephone Expense	1,600.00		
Legal Expense	2,000.00		
Insurance Expense Employee	81,674.00		
Information Technology Expense	1,193.00		
Miscellaneous Expense	500.00		
Contingency	26,567.00		
<b>Total Building Department</b>	<b><u>\$292,233.00</u></b>	<b><u>\$292,233.00</u></b>	<b><u>\$0.00</u></b>

**Business Office:**

Elected Officials Salaries			
Salary/Wages	151,340.00		
Dues/Subscriptions/Publications	1,500.00		
Office Expense	17,840.00		
Information Technology Expense	1,790.00		
Overtime	200.00		
Meetings/Seminar/Conference	600.00		
Telephone Expense	1,415.00		
Insurance Expense - Employee	29,848.00		
Miscellaneous Expense	1,000.00		
Contingency	20,554.00		
<b>Total Business Office</b>	<b><u>226,087.00</u></b>	<b><u>\$226,087.00</u></b>	<b><u>\$0.00</u></b>

**Police Department:**

Non-Sworn Wage	112,496.00
Overtime/Sworn	40,000.00
Overtime - Non-Sworn	500.00
Insurance Employee	275,283.00
ICMA-RA Contribution	6,687.00
Sworn Police Wages	1,476,561.00
Sev. Bonus Sick Pay	2,000.00
Education Pay	8,900.00
New Cars	46,102.00
Dues/Sub./Publ.	4,220.00
Postage/Office Supp.	4,500.00
New Equipment	10,374.00
R & M - Equipment	4,000.00
Contrib to Police Pens.	587,884.00
Commissioner's Expenses	4,038.00
R & M - Building	7,500.00
Rabies Control	6,000.00
Radio Expense	4,000.00
Telephone Expense	12,396.00
Service Contracts	46,296.00
Mtgs/Conf/Sem/Sch	11,000.00
Vehicle Gas & Oil	30,000.00
Veh Oper./Maint.	15,000.00
Firearms Training	9,000.00
Utilities	12,920.00
Heating Gas Expense	1,500.00

Legal & Prof. Exp.	3,000.00		
Community Policing	200.00		
Sex Offender Registration Expense	1,500.00		
Printing	1,000.00		
Photographic Exp	500.00		
Police Supplies	1,000.00		
Uniform Expense	15,000.00		
Janitor Supplies	1,000.00		
Police Investigation	4,500.00		
Towing	800.00		
Physicals	260.00		
Safety Expense	2,000.00		
Misc Exp.	500.00		
Dispatch Consolidation	360,000.00		
Information Technology	14,017.00		
Contingency	314,444.00		
<b>Total Police Department</b>	<b>3,458,878.00</b>	<b>2,736,579.35</b>	<b>722,298.65</b>

**Code Hearing Department:**

Office Supplies	2,500.00		
Monthly Software License	3,600.00		
MSI Commision	7,500.00		
Legal Expenses	500.00		
Professional Expenses	9,000.00		
Miscellaneous Expense	1,000.00		
Contingency	2,410.00		
<b>Total Code Hearing Department</b>	<b>26,510.00</b>	<b>26,510.00</b>	<b>0.00</b>

**Street Department:**

Overtime	20,000.00
Grounds Maintenance	10,000.00
Sidewalk repairs	50,000.00
Salaries	309,258.00
Insurance-Employee	86,017.00
Postage & Office Sup.	500.00
New Equipment	5,000.00
Repair & Maint Equip.	20,000.00
Snow Removal/Meals	500.00
Information Technology	597.00
Alarm Expense	2,000.00
Sign Material	7,000.00
Loan/Principal	80,139.00
Loan/Interest	8,928.00
Radio Expense	250.00
Bldg Maint. & Repair	3,000.00
Vehicle Gas & Oil	13,500.00
Veh. Operation & Maint.	20,000.00
Tree & Stump Removal	7,500.00
Paint & Painting Sup.	10,000.00
Utilites	7,985.00
Telephone Expense	5,300.00
Heating Gas Expense	4,500.00
Legal & Professional Exp	250.00
Sales tax project-Infrast.	1,350,000.00
Engineering/Sales Tax Project	10,000.00
Barricade Expense	500.00
Uniform Expense	1,100.00
Janitor Supplies	5,000.00
Small Tools	500.00
Supplies	500.00

Physicals	375.00		
Safety Expense	2,500.00		
Miscellaneous Expense	2,000.00		
Contingency	204,470.00		
<b>Total Steet Department</b>	<b>\$2,249,169.00</b>	<b>\$2,249,169.00</b>	<b>\$0.00</b>

**Public Property:**

Heater & A/C Repairs	3,000.00		
Grounds Maintenance	1,000.00		
New Equipment	200.00		
Equipment Rental			
Repair & Maint. Equipment	1,000.00		
Bldg. Maint & Repairs	5,000.00		
Community Building - R & M	5,000.00		
Equipment Gas & Oil	200.00		
Utilities	57,950.00		
Fire Alarm Service Expense	4,000.00		
Heating Gas Expense	1,200.00		
Limestone Building Expense	10,000.00		
Janitors Supplies	1,000.00		
Volunteer Projects	500.00		
Miscellaneous Expense	500.00		
Emerald Ash Borer/Misc Exp	1,000.00		
Contingency	9,155.00		
<b>Total Public Property</b>	<b>\$100,705.00</b>	<b>\$100,705.00</b>	<b>\$0.00</b>

**Fire Department:**

Fire Investigation	50.00
Overtime	60,000.00
Insurance-Employee	204,124.00
ICMA-RA Contribution	2,615.00
Paid on Call Firemen	6,000.00
Holiday/Vacation Pay	35,239.00
Sworn Fire Salaries/Wages	848,288.00
Dues/Subsription/Pubs	4,080.00
Postage & Office Supplies	1,140.00
New Equipment	19,190.00
R & M Equipment	11,000.00
ESDA R & M Equipment	530.00
Commissioner's Expenses	4,038.00
Fire Truck/Principal	76,605.00
Radio Expense	1,500.00
Telephone Expense	5,855.00
R & M Building	5,000.00
Meetings/Seminars/Schools	2,500.00
Interest Expense	16,602.00
Vehicle Gas & Oil	10,000.00
Vehicle Operation & Maint.	25,000.00
Utilities	9,150.00
Heating Gas	3,000.00
Legal & Professional Exp	2,500.00
Uniform Expense	4,000.00
Janitors Supplies	1,000.00
Fire Supplies & Chemicals	1,500.00
Physicals	500.00
Safety Expense	100.00
Micellaneous Expense	300.00
Information Technology	1,343.00
Training Materials	100.00
Public Education Materials	100.00

Contingency	136,295.00		
<b>Total Fire Department</b>	<b>\$1,499,244.00</b>	<b>\$868,598.03</b>	<b>\$630,645.97</b>
<b>Social Security/Medicare/IMRF:</b>			
Social Security	56,651.00		
Medicare	44,832.00		
IL Municipal Retirement	79,504.00		
Contingency	18,099.00		
<b>TOTAL</b>	<b>\$199,086.00</b>	<b>\$23,098.00</b>	<b>\$175,988.00</b>
<b>Workers Comp/General Liability</b>			
Operating Transfer Out	230,000.00		
<b>TOTAL</b>	<b>\$230,000.00</b>	<b>\$45,803.76</b>	<b>\$184,196.24</b>
	\$9,053,662.00	\$7,137,817.65	\$1,915,844.35

SECTION II

That the following is a statement in detail of the purposes for which this levy is made where such purposes are not to be included in the General Levy Limits, but are additional hereto pursuant to Statute as indicated.

**Police Pension**

There is hereby levied for the purpose of paying the City's share of Police Pension the sum of \$661,484.00 in accordance with Chapter 40 ILCS 5/3-125 of the Illinois Compiled Statutes.

**Fire Pension**

There is hereby levied for the purpose of paying the City's share of Firemen's Pension the sum of \$512,559.00 in accordance with Chapter 40 ILCS 5/4-118 of the Illinois Compiled Statutes.

**Illinois Municipal Retirement Fund**

There is hereby levied for the purpose of paying the City's share of Illinois Municipal Retirement the sum of \$77,423.00 in accordance with Chapter 40 ILCS 5/7-171 of the Illinois Compiled Statutes.

**Police Protection**

There is hereby levied a Police Protection Tax for the sum of \$60,814.65 but not to exceed \$.075 cents per \$100 assessed valuation in accordance with Chapter 65 ILCS 5/11-1-3 of the Illinois Compiled Statutes.

**Fire Protection**

There is hereby levied a Fire Protection Tax for the sum of \$60,814.65 but not to exceed \$.075 cents per \$100 assessed valuation in accordance with Chapter 65 ILCS 5/11-7-1 of the Illinois Compiled Statutes.

**Social Security**

There is hereby levied for the purpose of paying City's share of Social Security and Medicare Tax the sum of \$98,565.00 in accordance with Chapter 40 ILCS 5/21-110 of the Illinois Compiled Statutes.

**Tort Fund**

There is hereby levied for the purpose of paying liability and property damage insurance the sum of \$71,836.35 in accordance with Chapter 745 ILCS 10/9-107 of the Illinois Compiled Statutes.

**Worker's Compensation**

There is hereby levied for the purpose of paying Worker's Compensation Insurance the sum of \$112,359.89 in accordance with Chapter 745 ILCS 10/9-107 of the Illinois Compiled Statutes.

SUMMARY OF TAXES LEVIED

General Corporate	\$202,715.49
Police Pension	\$661,484.00
Fire Pension	\$512,559.00
Illinois Municipal Retirement Fund	\$77,423.00
Police Protection Tax	\$60,814.65
Fire Protection Tax	\$60,814.65
Fire Prot/Rescue/Emer	\$57,272.32
Social Security/Medicare	\$98,565.00
Tort Fund	\$71,836.35
Worker's Compensation	\$112,359.89
	<hr/>
	\$1,915,844.35

### SECTION III

The Deputy City Clerk of Rock Falls, Illinois is hereby directed forthwith to file a certified copy of this ordinance with the County Clerk.

### SECTION IV

This ordinance shall be in full force and effect after its passage and approval and shall be published in pamphlet form according to law.

Section 1. The City Council finds that the customary practice of requiring a first and second reading of ordinances is not applicable or necessary in the case of this ordinance, and a first reading preliminary to adoption hereof is hereby waived, and this ordinance shall become effective upon its passage.

Section 2. All prior ordinances in conflict herewith are hereby repealed.

Section 3. If any section, paragraph, sentence, clause or other portion of this ordinance is held or deemed to be unconstitutional or invalid, then such holding or finding of unconstitutionality or invalidity shall not affect the validity of the remaining provisions of this ordinance.

Section 4. This ordinance shall be effective upon its adoption, passage and publication in pamphlet form.

Passed this \_\_\_\_\_ day of December, 2020.

\_\_\_\_\_  
William B. Wescott, Mayor

ATTEST:

\_\_\_\_\_  
Michelle K. Conklin, Deputy City Clerk

Fiscal Year Year Levy	2020 Tax Year 2019-Paid in 2020				FY 2021		% change
	Requested	Certified	Total Extension	Requested	Requested		
EAV Value est/actu	\$76,280,312.00			\$81,086,195.00		\$4,805,883.00	6.30%
Notes							
Corporate	0.2500	0.2438	\$185,971.40	0.2500	\$202,715.49		9.00%
IMRF	0.1138	0.1015	\$77,424.52	0.1138	\$77,423.00		0.00%
Fire Protection	0.0750	0.0732	\$55,837.19	0.0750	\$60,814.65		8.91%
Fire Pension	0.6095	0.5944	\$453,410.17	0.6321	\$512,559.00		13.05%
Police Protection	0.0750	0.0732	\$55,837.19	0.0750	\$60,814.65		8.91%
Police Pension	0.7904	0.7707	\$587,892.36	0.8158	\$661,484.00		12.52%
Audit	0.0336	0.0328	\$25,019.94	0.0000	\$0.00		
Tort	0.1207	0.1177	\$89,781.93	0.0886	\$71,836.35		-19.99%
Street & Bridge	0.0000	0.0000	\$0.00	0.0000	\$0.00		0.00%
ESDA	0.0000	0.0000	\$0.00	0.0000	\$0.00		0.00%
Social Security/Medi	0.1325	0.1293	\$98,630.44	0.1216	\$98,565.00		-0.07%
Crossing Guards	0.0000	0.0000	\$0.00	0.0000	\$0.00		0.00%
Worker's Comp	0.1888	0.1841	\$140,432.05	0.1386	\$112,359.89		-19.99%
<b>Subtotal</b>	<b>2.3893</b>	<b>2.3207</b>	<b>\$1,770,237.19</b>	<b>2.3104</b>	<b>\$1,858,572.02</b>		<b>4.99%</b>
Maximum Extension due to					\$0.01		
Bonds and Interest	0.0000	0.0000	\$0.00	0.0000	\$0.00		0.00%
Fire Prot/Rescue/Enr	0.0000	0.0000	\$0.00	0.0706	\$57,272.32		
<b>Total</b>	<b>2.3893</b>	<b>2.3207</b>	<b>\$1,770,237.19</b>	<b>2.3810</b>	<b>\$1,915,844.34</b>		<b>4.99%</b>
<b>Total Extension</b>		<b>104.99% Sub-total Δ</b>	<b>-0.44% Rate Change</b>				<b>4.99%</b>

\$

4.99%  
Per \$1000. of AV  
\$23.63

at last year's rate  
Per \$1000. of AV  
\$23.21

**INCREASE**

\$23,666 Assessed  
\$ 10.09  
Based on \$71,000.  
Fair Market Value

	Levied	Actuarial
Police Pension	\$661,484.00	\$ 587,884.00
Fire Pension	\$512,559.00	\$ 453,384.00

ORDINANCE NO. 2020-

AN ORDINANCE ABATING THE TAX HERETOFORE LEVIED  
FOR THE YEAR 2020 TO PAY DEBT SERVICE ON  
\$5,300,000 GENERAL OBLIGATION BONDS  
(Alternate Revenue Sources), SERIES 2017  
OF THE CITY OF ROCK FALLS WHITESIDE COUNTY, ILLINOIS

WHEREAS, the City Council ("Council") of the City of Rock Falls, Whiteside County, Illinois, ("issuer") by Ordinance adopted on the 4th day of April, 2017, said Ordinance being adopted as Ordinance No. 2017-2301 which did provide for the issue of an amount not to exceed \$5,300,000 General Obligation Alternate Bonds (Alternate Revenue Source) (the "Bonds") and the levy of a direct annual tax sufficient to pay principal and interest on the Bonds; and

WHEREAS, the issuer will have pledge revenues (as defined in the Ordinance) available for the purpose of paying the debt service due on the bonds during the next succeeding bond year; and

WHEREAS, it is necessary and in the best interest of the issuer that the tax heretofore levied for the year 2020 to pay such debt service on the bonds be abated;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Rock Falls, Whiteside County, Illinois as follows:

Section I. Abatement of Tax. The tax hereto levied for the year 2020 in the Ordinance is hereby abated in its entirety, said levy having been determined previously to be in the amount of **\$347,305.00**.

Section II. Filing of Ordinance. Forthwith upon the adoption of this Ordinance, the Municipal Clerk of the City of Rock Falls shall file a certified copy hereof with the County Clerk of Whiteside County, Illinois and it shall be the duty of said County Clerk to abate said tax levied for the year 2020 in accordance with the provision hereof.

Section III. Effective Date. This Ordinance shall be in full force and effect forthwith upon its adoption.

This ordinance shall be published in pamphlet form and shall be effective upon adoption and passage.

Passed by the City Council of the City of Rock Falls this \_\_\_\_\_ day of December, 2020.

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William B. Wescott, Mayor

Attest:

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Michelle K. Conklin, Deputy City Clerk

ORDINANCE NO. 2020-

AN ORDINANCE ABATING THE TAX HERETOFORE LEVIED  
FOR THE YEAR 2020 TO PAY DEBT SERVICE ON  
\$2,115,000 GENERAL OBLIGATION BONDS  
(Alternate Revenue Sources), SERIES 2016  
OF THE CITY OF ROCK FALLS WHITESIDE COUNTY, ILLINOIS

WHEREAS, the City Council (“Council”) of the City of Rock Falls, Whiteside County, Illinois, (“issuer”) by Ordinance adopted on the 16<sup>th</sup> day of August, 2016, said Ordinance being adopted as Ordinance No. 2016-2278 which did provide for the issue of an amount not to exceed \$2,115,000 General Obligation Alternate Bonds (Alternate Revenue Source) (the “Bonds”) and the levy of a direct annual tax sufficient to pay principal and interest on the Bonds; and

WHEREAS, the issuer will have pledge revenues (as defined in the Ordinance) available for the purpose of paying the debt service due on the bonds during the next succeeding bond year; and

WHEREAS, it is necessary and in the best interest of the issuer that the tax heretofore levied for the year 2020 to pay such debt service on the bonds be abated;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Rock Falls, Whiteside County, Illinois as follows:

Section I. Abatement of Tax. The tax hereto levied for the year 2020 in the Ordinance is hereby abated in its entirety, said levy having been determined previously to be in the amount of **\$146,400.00**.

Section II. Filing of Ordinance. Forthwith upon the adoption of this Ordinance, the Municipal Clerk of the City of Rock Falls shall file a certified copy hereof with the County Clerk of Whiteside County, Illinois and it shall be the duty of said County Clerk to abate said tax levied for the year 2020 in accordance with the provision hereof.

Section III. Effective Date. This Ordinance shall be in full force and effect forthwith upon its adoption.

This ordinance shall be published in pamphlet form and shall be effective upon adoption and passage.

Passed by the City Council of the City of Rock Falls this \_\_\_\_\_ day of December, 2020.

---

William B. Wescott, Mayor

Attest:

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Michelle K. Conklin, Deputy City Clerk

ORDINANCE NO.

AN ORDINANCE ABATING THE TAX HERETOFORE LEVIED  
FOR THE YEAR 2020 TO PAY DEBT SERVICE ON  
\$9,200,000 GENERAL OBLIGATION BONDS  
(Electric System Alternate Revenue Source), SERIES 2018A  
OF THE CITY OF ROCK FALLS WHITESIDE COUNTY, ILLINOIS

WHEREAS, the City Council ("Council") of the City of Rock Falls, Whiteside County, Illinois, ("issuer") by Ordinance adopted on the 19th day of June, 2018, said Ordinance being adopted as Ordinance No. 2018-2381 which did provide for the issue of an amount not to exceed \$9,200,000 General Obligation Bonds (Electric System Alternate Revenue Source) (the "Bonds") and the levy of a direct annual tax sufficient to pay principal and interest on the Bonds; and

WHEREAS, the issuer will have pledge revenues (as defined in the Ordinance) available for the purpose of paying the debt service due on the bonds during the next succeeding bond year; and

WHEREAS, it is necessary and in the best interest of the issuer that the tax heretofore levied for the year 2020 to pay such debt service on the bonds be abated;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Rock Falls, Whiteside County, Illinois as follows:

Section I. Abatement of Tax. The tax hereto levied for the year 2020 in the Ordinance is hereby abated in its entirety, said levy having been determined previously to be in the amount of **\$518,800.00**.

Section II. Filing of Ordinance. Forthwith upon the adoption of this Ordinance, the Municipal Clerk of the City of Rock Falls shall file a certified copy hereof with the County Clerk of Whiteside County, Illinois and it shall be the duty of said County Clerk to abate said tax levied for the year 2020 in accordance with the provision hereof.

Section III. Effective Date. This Ordinance shall be in full force and effect forthwith upon its adoption.

This ordinance shall be published in pamphlet form and shall be effective upon adoption and passage.

Passed by the City Council of the City of Rock Falls this \_\_\_\_\_ day of December, 2020.

---

William B. Wescott, Mayor

Attest:

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Michelle K. Conklin, Deputy City Clerk

ORDINANCE NO. 2020-

AN ORDINANCE ABATING THE TAX HERETOFORE LEVIED  
FOR THE YEAR 2020 TO PAY DEBT SERVICE ON  
\$1,200,000 GENERAL OBLIGATION BONDS  
(Waterworks System Alternate Revenue Source), SERIES 2018B  
OF THE CITY OF ROCK FALLS WHITESIDE COUNTY, ILLINOIS

WHEREAS, the City Council (“Council”) of the City of Rock Falls, Whiteside County, Illinois, (“issuer”) by Ordinance adopted on the 19th day of June, 2018, said Ordinance being adopted as Ordinance No. 2018-2379 which did provide for the issue of an amount not to exceed \$1,200,000 General Obligation Bonds (Waterworks System Alternate Revenue Source) (the “Bonds”) and the levy of a direct annual tax sufficient to pay principal and interest on the Bonds; and

WHEREAS, the issuer will have pledge revenues (as defined in the Ordinance) available for the purpose of paying the debt service due on the bonds during the next succeeding bond year; and

WHEREAS, it is necessary and in the best interest of the issuer that the tax heretofore levied for the year 2020 to pay such debt service on the bonds be abated;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Rock Falls, Whiteside County, Illinois as follows:

Section I. Abatement of Tax. The tax hereto levied for the year 2020 in the Ordinance is hereby abated in its entirety, said levy having been determined previously to be in the amount of **\$88,275.00**.

Section II. Filing of Ordinance. Forthwith upon the adoption of this Ordinance, the Municipal Clerk of the City of Rock Falls shall file a certified copy hereof with the County Clerk of Whiteside County, Illinois and it shall be the duty of said County Clerk to abate said tax levied for the year 2020 in accordance with the provision hereof.

Section III. Effective Date. This Ordinance shall be in full force and effect forthwith upon its adoption.

This ordinance shall be published in pamphlet form and shall be effective upon adoption and passage.

Passed by the City Council of the City of Rock Falls this \_\_\_\_\_ day of December, 2020.

---

William B. Wescott, Mayor

Attest:

---

Michelle K. Conklin, Deputy City Clerk

ORDINANCE NO. 2020-

AN ORDINANCE ABATING THE TAX HERETOFORE LEVIED  
FOR THE YEAR 2019 TO PAY DEBT SERVICE ON  
\$1,200,000 GENERAL OBLIGATION BONDS  
(Sewerage System Alternate Revenue Source), SERIES 2018C  
OF THE CITY OF ROCK FALLS WHITESIDE COUNTY, ILLINOIS

WHEREAS, the City Council (“Council”) of the City of Rock Falls, Whiteside County, Illinois, (“issuer”) by Ordinance adopted on the 19th day of June, 2018, said Ordinance being adopted as Ordinance No. 2018-2380 which did provide for the issue of an amount not to exceed \$1,200,000 General Obligation Bonds (Sewerage System Alternate Revenue Source) (the “Bonds”) and the levy of a direct annual tax sufficient to pay principal and interest on the Bonds; and

WHEREAS, the issuer will have pledge revenues (as defined in the Ordinance) available for the purpose of paying the debt service due on the bonds during the next succeeding bond year; and

WHEREAS, it is necessary and in the best interest of the issuer that the tax heretofore levied for the year 2020 to pay such debt service on the bonds be abated;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Rock Falls, Whiteside County, Illinois as follows:

Section I. Abatement of Tax. The tax hereto levied for the year 2020 in the Ordinance is hereby abated in its entirety, said levy having been determined previously to be in the amount of **\$109,900.00**.

Section II. Filing of Ordinance. Forthwith upon the adoption of this Ordinance, the Municipal Clerk of the City of Rock Falls shall file a certified copy hereof with the County Clerk of Whiteside County, Illinois and it shall be the duty of said County Clerk to abate said tax levied for the year 2020 in accordance with the provision hereof.

Section III. Effective Date. This Ordinance shall be in full force and effect forthwith upon its adoption.

This ordinance shall be published in pamphlet form and shall be effective upon adoption and passage.

Passed by the City Council of the City of Rock Falls this \_\_\_\_\_ day of December, 2020.

---

William B. Wescott, Mayor

Attest:

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Michelle K. Conklin, Deputy City Clerk



November 17, 2020

Rock Falls Electric Department  
Attn: Dick Simon  
dsimon@rockfalls61071.com

*Subject: Recommendation – 15 kV Switchgear*

Dear Mr. Simon:

I am sending you this letter to provide a recommendation for purchasing a 15 kV switchgear for use on the electrical system within the City of Rock Falls. Two quotes were received for the specified switchgear.

A bid tabulation is attached for your reference and prices ranged from about \$64,000 to \$116,000.

I recommend that Rock Falls accept the proposal from Resco for the G&W LPFI switchgear in the amount of \$68,845. This is item 1 in the attached G&W/Resco quote of \$64,310.00 plus the adder of \$4,535.00 for the control power PT to make this a self-powered switchgear.

Please let me know if you have questions or comments.

Sincerely,

Jamie Sieren  
Power System Engineering, Inc.  
1532 West Broadway, Madison, WI 53713

Enclosure: Bid Tabulation  
Resco quote dated 11-09-2020 and the typical manufacturer terms and conditions

Cc: Jim Weikert, Power System Engineering  
Erik Sonju, P.E. Power System Engineering  
Darren Westby, Power System Engineering  
Sherry Wind, Rock Falls Electric Department, swind@rockfalls61071.com

City of Rock Falls					
Bid Tabulation					
Latest Revision: 11-17-2020					
		Border States	Border States	Resco/G&W	Resco/G&W
1	Base price for one 15KV padmount distribution switchgear with AC service power by Rock Falls. Total Price (F.O.B. site):	\$113,600.00 (w/o PT)		\$64,310.00	\$85,780.00
2	Base price for one 15 kV padmount distribution switchgear with AC service power included as part of the switchgear. Total Price (F.O.B. site):		\$116,400.00 (w/ PT)	\$68,845.00	\$89,304.00
3	Alternate Bid assuming alternate items are acceptable. List details about alternates on a separate sheet.	N/A	N/A	N/A	N/A
4	Delivery (after receipt of order) - Method of Delivery	27 weeks Flatbed Truck	27 weeks Flatbed Truck	23+ weeks Flatbed Truck	23+ weeks Flatbed Truck
5	State the warranty period	12 months from installation	12 months from installation	2 years from shipment	2 years from shipment
	Adder for month warranty extension	12	12	12	12
	Price:	\$1,500.00	\$1,500.00	\$1,600.00	\$1,600.00
6	Price for optional field service for final checkout:	N/A	N/A	\$6,000.00	\$6,000.00
7	Price for the appropriate size box pad if available:	N/A	N/A	N/A	N/A
	List manufacturer/type:	N/A	N/A	N/A	N/A
8	Shop drawing submission schedule (in weeks)				
	Approval:	6 weeks	6 weeks	7 weeks	7 weeks
	Final (For Record):			4 to 5	4 to 5
9	Switchgear Data:				
A	Manufacturer	Eaton - ISG	Eaton - ISG	G&W Electric	G&W Electric
B	Factory Location	Danoco, CO	Danoco, CO	Bolingbrook, IL	Bolingbrook, IL
C	Manufacturers' type destination & Cat #	PS40406662-10XA-A0X	PS40406662-10XA-A0X	LPFI43-376-12-11FA-A	PLS43-376-12-11FA-A
D	Weights:				
	Shipping (lbs):	3700	3700	3800	TBD
	Total (lbs):	3500	3500	3800	TBD
E	Control Type & Model #	CA-200XX, SEL 751	CA-200XX	Two SEL-751	Two SEL-751
F	DC Voltage			24 VDC	24 VDC
G	AC Voltage			120VAC	120VAC
H	Insulation Material (SF6, oil, solid dielectric, other)	Solid Dielectric	Solid Dielectric	SF6	Solid dielectric
10	The equipment proposed is in complete compliance with the specifications. If not, list all exception on a separate sheet.			No - see proposal	No - see proposal

Pole Attachment Agreement

By and between

THE CITY OF ROCK FALLS, ILLINOIS

And

SURF AIR WIRELESS, LLC

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## POLE ATTACHMENT AGREEMENT

THIS POLE ATTACHMENT AGREEMENT ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Rock Falls, Illinois, a municipal corporation ("City") and Surf Air Wireless, LLC ("Licensee").

In consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

### 1.0 PURPOSE AND CONSTRUCTION OF AGREEMENT.

1.1 Licensee provides or intends to provide some or all of CATV Services, Telecommunications Services, and Internet Services within City's service territory, as those services are defined in Section 2.0, *infra*. In connection with these services, Licensee desires to attach Cable, associated Attachments, and Power Supplies to electrical distribution poles that are owned by City either wholly or jointly with others within City's service territory at the location(s) described in Exhibit "A" hereto (as the same may be amended by the agreement of the parties from time to time).

1.2 City owns, both wholly and jointly with others, valuable pole plant which it acquired, constructed and maintains at considerable cost and expense. City will permit the placement of Licensee's Cable, Attachments and Power Supplies to certain of such poles, provided (a) City receives appropriate compensation as set forth in this Agreement, (b) City is protected from all liability that may result from Licensee's use of such Cable, Attachments, Power Supplies or City Poles, and (c) such Cable, Attachments, or Power Supplies do not materially interfere with City's own service and operating requirements, including considerations of safety, reliability, and engineering. The permission to use City Poles being granted by City to Licensee hereunder shall be subject and subordinate in all respects to City's service and operating requirements.

1.3 This Agreement is not intended, and shall not be construed, to authorize any action by Licensee that would adversely affect the quality or reliability of the service provided by City. Nor shall it be construed so as to preclude City from taking any action that it considers necessary or appropriate to maintain the reliability or quality of such service or to ensure the safety of its employees, its customers, or the public.

1.4 Through this Agreement, City intends to give Licensee and Licensee intends to receive a license to use particular City Poles for Licensee's Cable and Attachments (collectively "Facilities", as defined in Article 2.0) and Power Supplies only in the manner and solely for the purposes set forth herein. No leasehold or easement rights and no interest in real estate or other interest in property is granted or intended to be granted by this Agreement. No use, however extended, of City Poles under this Agreement shall create or vest in Licensee any ownership or property rights in City Poles.

1.5 Licensee acknowledges that this Agreement was negotiated between City and Licensee, that Licensee has had an adequate opportunity to review the Agreement, that it has made an independent assessment of the business risks and benefits of entering into this Agreement, and that based on this evaluation Licensee desires to enter into this Agreement.

1.6 The laws of the State of Illinois, without regard to its conflict of law principles, shall govern the construction of this Agreement.

## 2.0 DEFINITIONS.

2.1 "Pole Attachment Application" (hereinafter "Application") means the Application submitted by Licensee to obtain permission from City for the placement, Modification or removal of any of Licensee's Facilities or Power Supplies on or from City Poles. The form of Application shall be prescribed by City and is incorporated into City's Standards and Specifications.

2.2 "Attachment" or "Attachments" means equipment or hardware, including without limitation vertical risers and grounding wires, that is used in providing Licensee Service and that is placed on City Poles pursuant to this Agreement in conjunction with the placement of Licensee Cables or Power Supplies. Licensee shall provide a detailed description in its Application of such equipment and hardware and the number of proposed Attachments to City Poles. An Attachment is "placed on" or is "attached to" a City Pole if it is physically located on the pole, if it is supported either directly or indirectly by the City Pole, or if it precludes the use of the adjacent City Pole space by others.

2.3 "Cable" means a single aerial cable or wire or fiber optic strand used by Licensee to provide Licensee Service and any hardware or equipment mounted thereon, including without limitation cable amplifiers and splice boxes, that are owned by Licensee and attached to City Poles pursuant to this Agreement. Cable also includes a single aerial cable or wire or fiber optic strand overlashed on another Licensee aerial cable, wire, or fiber optic strand. Cable is "placed on" or "attached to" a City Pole if any portion of it is physically located on the City Pole, if it is supported either directly or indirectly by the City Pole, or if any portion of it precludes the use of the adjacent City Pole space by others. Licensee shall provide a detailed description of Licensee's Cable in its Application.

2.4 "Cable Service" or "CATV Service" means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

2.5 "City Pole" or "Pole" means an electrical distribution pole, the highest energized voltage of which is 69 kv, that City owns solely or jointly with others.

2.6 "Cost" or "Costs" means City's fully-allocated costs, including without limitation all direct and indirect costs for labor, time, services, material, contractors and related engineering and administrative expense, as determined by City in accordance with its standard and applicable engineering, construction, accounting and billing practices and procedures.

2.7 "Effective Date" means the date of this Agreement.

2.8 "Environmental Laws" means all federal, state and local statutes, and all regulations or ordinances of any federal, state, county or local regulatory agency, relating to the protection of health, safety or the environment including, without limitation, the Clean Air Act, the Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substance Control Act, all statutes, rules and regulations applicable to wetlands and all similar state and local laws now or hereinafter enacted or amended.

2.9 “Facility” means a Cable or some other form of Attachment that is attached to City Poles. The term “Facility” shall include any Modification approved by City in accordance with this Agreement.

2.10 “Hazardous Materials” means any waste, pollutant, toxic substance or hazardous substance, contaminant or material regulated by any Environmental Laws including, without limitation, petroleum or petroleum- based substances or wastes, asbestos and polychlorinated biphenyls.

2.11 “Information Service” is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

2.12 “Internet Service” is an information service provided using a worldwide system of public and private computer networks that allows for the exchange of information – voice, video, data – through a universal language (protocol).

2.13 “Licensee Service” means the services provided or intended to be provided by Licensee to its customers using its Facilities and Power Supplies, as described by Licensee in its Application.

2.14 “Make Ready” is the replacements, changes and rearrangements, if any, to the facilities, equipment or plant of City and the facilities of other users and all related engineering and administrative work necessary to accommodate the attachment of Licensee’s Facilities, or Power Supplies, or proposed Modifications.

2.15 “Marked-Up Application” means the Application as reviewed and completed by City to identify any Make Ready work, the estimated Cost thereof and any special conditions governing placement, Modification or removal of any Facilities or Power supplies on or from City Poles. Each Marked-Up Application shall constitute a billing for the estimated cost of any Make Ready work described therein. The actual cost of such Make Ready work, if different from the estimate, may be “trued up” as set forth in Article 8.1, infra.

2.16 “Modification,” “Modifications” or “Modify” means any change or alteration affecting the Facilities or Power Supplies, including without limitation any change in the number, type, ownership or use of the Facilities or Power Supplies, which causes the information provided by Licensee in the prior Application(s) to be incorrect or incomplete in any respect.

2.17 “Permit” means the document issued by City when an Application is granted, providing permission to Licensee for the placement, Modification or removal on or from City Poles of the specific Facilities and Power Supplies identified in the Marked-Up Application. The form of Permit shall be prescribed by City and incorporated into City’s Standards and Specifications.

2.18 “Power Supply” or “Power Supplies” means the Licensee Power Supply mounted on or supported by a City Pole that is owned by Licensee and used in providing Licensee Service in conjunction with its Facilities. In its Application, Licensee shall provide a detailed description of its Power Supplies and the proposed number of Power Supplies.

2.19 "Standards and Specifications" means all standards, practices, procedures, rules, regulations and other requirements adopted by City and applicable to the construction, installation, modification, repair, maintenance, use, operation, relocation or removal of any Facilities or Power Supplies, as such requirements may be revised, modified, restated, supplemented or updated by City from time to time. City's current Standards and Specifications are set forth in the document attached as Appendices D and E.

2.20 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

2.21 "Telecommunications Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

### **3.0 TERM OF AGREEMENT.**

3.1 This Agreement shall commence on its Effective Date and shall remain in effect for an initial period of five (5) years following the Effective Date, unless terminated sooner in accordance with this Agreement. The Agreement will thereafter continue in force and effect from year to year. The Agreement will be subject to termination by either party upon the giving by the party of written notice to the other party sixty (60) days prior to the end of the five year initial period, or thereafter sixty (60) days prior to the termination of any yearly anniversary date of this Agreement, unless the Agreement is otherwise terminated in accordance with this Agreement.

### **4.0 PERMIT FOR OVERLASHING OR NOTIFICATION FOR NEW SERVICE**

4.1 Licensee agrees to apply to City and to obtain a Permit for Modification before it overlashes or permits the overlashing of Cable to its own Facilities on City Poles, whether the overlashed Cable is owned by Licensee or by a third party.

4.2 Licensee agrees to apply to City and to obtain a Permit for Modification before it overlashes its Cable to the Facilities of a third party on City Poles.

4.3 Licensee shall notify City of any change in the Licensee Services that it is offering using its Facilities and Power Supplies from those described in its Application, and particularly upon its offering of Telecommunications Service or Internet Service using its Facilities and Power Supplies, including overlashed Cable. Licensee also shall notify City upon the offering by a third party of Telecommunications Service, Internet Service, or any other services using Cable overlashed to Licensee's Facilities on City Poles.

### **5.0 AUTHORITY FOR ATTACHMENTS AND MODIFICATIONS**

5.1 No Facilities or Power Supplies shall be attached to any City Poles or Modified until (a) an Application has been submitted by Licensee, reviewed, marked-up and approved by City, and accepted in marked-up form by Licensee and a Permit has been issued by City, all in accordance with Articles 5.0, 6.0, 7.0 and 8.0 of this Agreement, and (b) Licensee has obtained all necessary permits, licenses, consents, certifications and approvals from all other governmental authorities and third parties in connection therewith, including without limitation a permit from the joint owner of any jointly owned City Poles.

5.2 City shall either grant or deny access to City Poles within forty-five (45) days of receipt by City of the Application. If City denies the Application, it shall provide specific

evidence and information, in writing, supporting its denial. City reserves the right to deny any Application when, in its judgment, it determines that the proposed placement or Modification of the Facilities or Power Supplies should be denied for reasons of safety, reliability, engineering or insufficient capacity, or because such placement or Modifications would adversely affect the use of the City Poles by City or its service or operations, or the current use of any other user. City additionally reserves the right, subject to applicable law, to determine the conditions under which placement of any Facilities or Power Supplies or any Modifications will be permitted, which placement or Modification would otherwise be denied. All Facilities or Power Supplies installed or to be installed in line with any of City's Poles must be attached to City Poles in accordance with this Agreement.

5.3 Licensee agrees to comply with any and all applicable laws, statutes, ordinances, rules and regulations related to the installation, use and operation of its Facilities or Power Supplies. Additionally, Licensee shall obtain and maintain, at its sole cost and expense, any and all easements, licenses, consents, franchises, certifications, permits or other authorizations required from any property owner or governmental entity in connection with the installation, use and operation of Licensee's Facilities or Power Supplies on any City Poles. Licensee shall be responsible for the cost of all such permits or approvals, whether such charges are imposed against Licensee or City.

5.4 Licensee shall not place any Facilities or Power Supplies on City Poles until all necessary Make Ready work has been performed by City.

5.5 Licensee shall install, maintain and remove all Licensee Facilities and Power Supplies in accordance with City's Standards and Specifications. Licensee shall be responsible for familiarizing itself with the Standards and Specifications.

5.6 The permission given by City to Licensee to use the City Poles under this Agreement shall in no way limit City's use of City Poles for its own business operations, or the rights or privileges previously given by City to any third parties, not in privity to this Agreement, to use any City Poles, whether or not such City Poles are at any time occupied by Licensee's Facilities or Power Supplies.

5.7 In the event of any emergency or condition during installation that threatens persons or property, City may, in its sole discretion, order Licensee to stop work as appropriate. City will give such order and notice in such manner as is practicable under the circumstances.

## **6.0 APPLICATION FOR ATTACHMENTS AND MODIFICATIONS.**

6.1 Licensee shall submit an Application to City for the attachment of each proposed Facility or Power Supply to City Poles or for the Modification of each such Facility or Power Supply and shall specify therein the kind of Attachment sought and the date proposed for such Attachment, a detailed description of the Facilities or Power Supplies, the number of Attachments that are included as part of the Facilities or Power Supplies, the proposed Modification, if any, to the Facilities or Power Supplies, and the location of the affected City Poles.

6.2 Licensee shall also submit, as part of such Application, a load study, conducted by a licensed Professional Engineer, demonstrating that the additional load placed on City's Poles by Licensee's Facilities or Power Supplies or proposed Modification and associated Attachments will not overburden such Poles, or identifying the specific Poles that will be overburdened and thus will have to be changed out as a result of the attachment of Licensee's Facilities or Power Supplies. The required load study shall be conducted by Licensee at its expense.

6.3 Licensee will accompany City at City's request on all pre-construction Pole walks scheduled by City to determine the nature and extent of required Make Ready work related to the proposed attachment of Licensee's Facilities or Power Supplies to City Poles as set forth in the Application. With respect to Modifications, Licensee shall also accompany City at City's request on any field verifications scheduled by City to determine the feasibility of the proposed Modification set forth in the Application and whether any Make Ready work related to the proposed Modification is required. Licensee shall pay all Costs incurred by City in conducting such pre-construction Pole walks or conducting such field verifications.

6.4 City will indicate on the Marked-Up Application the Make Ready work necessary to accommodate the proposed attachment of Licensee's Facilities, Power Supplies, or the proposed Modifications and the estimated Cost of such Make Ready work. City will also specify on the Marked-Up Application any special conditions that will govern the proposed Modifications or the placement of Licensee's Facilities or Power Supplies on City Poles.

6.5 If, after receiving the Marked-Up Application, Licensee still desires to have its Facilities or Power Supplies placed on City Poles or to implement the proposed Modifications under the terms and conditions indicated on the Marked-Up Application, Licensee shall accept such terms and conditions by signing the Marked-Up Application and returning the same to City within ten (10) business days after delivery by City, together with payment in full of the estimated Make Ready Cost shown on the Marked-Up Application and applicable fees as set forth in Article 12.0.

6.6 City will cause Make Ready work on City's facilities, if any, identified in the Marked-Up Application to be scheduled and performed in accordance with this Article and Article 7. City will notify Licensee upon completion of such Make-Ready work and issue a Permit authorizing the attachment, Modification or removal of Licensee's Facilities or Power Supplies pursuant to the Marked-Up Application and subject to the terms and conditions set forth therein.

## **7.0 ATTACHMENT OF FACILITIES OR POWER SUPPLIES TO CITY POLES.**

7.1 After completion of the Application process, Licensee may then attach its Facilities or Power Supplies to the designated City Poles or make any Modifications in accordance with (a) the terms and conditions of the Marked-Up Application, (b) City's Standards and Specifications, and (c) all applicable laws, statutes, ordinances, rules and regulations imposed by any governmental entity with jurisdiction over the construction, operation, use, maintenance, repair, replacement or removal of the Facilities or Power Supplies, City Poles or other facilities thereon, including, but not limited to, the Occupational Safety and Health Administration Regulations ("OSHA") and 83 Illinois Administrative Code, Part 305, as amended from time to time. Licensee will take whatever steps are necessary to activate the Facilities or Power Supplies for use in their designated purpose. Licensee will accompany City at City's request on any post-construction inspections scheduled by City to determine Licensee's compliance with the terms and conditions of this Agreement and the Marked-Up Application. Licensee shall pay when billed for all Costs incurred by City in conducting any such post-construction inspections.

7.2 Each Facility or Power Supply shall be clearly labeled at each pole location with Licensee's name and a telephone number where a representative of Licensee can be reached, twenty-four (24) hours a day, seven (7) days a week, to receive reports of problems with the Facilities or Power Supplies. Licensee shall investigate all such reports in a timely manner and perform all necessary repair and maintenance to remedy such problems.

7.3 For Attachments to jointly owned City Poles, Licensee will make arrangements with the joint owner of the Pole to arrange for bonding of its Facilities to available

communications devices at the first City Pole, at every tenth (10th) City Pole thereafter and at the last City Pole for each segment of Licensee's Facilities. (Notwithstanding the foregoing, the number of such bonded connections shall be no less than the number required by the National Electrical Safety Code, as amended from time to time.) For Attachments to solely owned City Poles, City shall cause such bonding to be made to City's multi-grounded neutral system in accordance with City's specifications. City will schedule such work in a manner that permits the work to be completed without conflict or interference with City's prior work commitments and regular business operations. Licensee shall pay City in advance for the Cost of the required bonding as determined and performed by City.

7.4 Placement or attachment of any of Licensee's Facilities or Power Supplies at a new or different position on any City Pole shall, in each instance where such placement or attachment has not been specifically approved by a prior Permit, constitute a Modification requiring the submission of a new Application and Permit.

## **8.0 COST AND SCHEDULING OF MAKE READY.**

8.1 Licensee agrees to pay in advance the estimated Cost of all Make Ready work, as such Cost is identified in the Marked-Up Application. Upon receipt of such payment and the Marked-Up Application as accepted by Licensee, City will cause the Make Ready work to be performed in accordance with a schedule that avoids conflict or interference with City's prior work commitments and regular business operations. Upon completion of the Make Ready work identified in the Marked-Up Application, the Cost of such Make Ready work may be "trued up."

8.2 Licensee may request in writing that all or part of the Make Ready work be performed on a schedule different than that which otherwise would be implemented by City pursuant to Article 8.1. If Licensee makes such a request in writing, City will meet with Licensee to determine if the requested schedule is feasible and will not interfere with City's business operations and with its obligations to its own customers and to other Licensees. If City decides that it is feasible to undertake a different schedule for Make Ready work for Licensee than would otherwise result under Article 8.1, based on Licensee's written request and City's meeting with Licensee, City and Licensee will negotiate a final schedule acceptable to both, which schedule will be confirmed in writing. Licensee agrees to pay City all costs incurred in meeting the revised schedule for Make-Ready, including, but not limited to, those costs associated with overtime and with penalties which may be owed to the bargaining unit for work performed by contractors.

8.3 Licensee agrees to pay all Costs ( to the extent not paid pursuant to Articles 8.1 or 8.2 above), when billed, for any engineering work performed or administrative expense incurred by City, including any analysis, survey or inspection of the proposed route of Licensee's Facilities, or the preparation of engineering documentation or work orders and drawings, that may be necessary to accommodate Licensee's Facilities or Power Supplies, whether occurring prior or subsequent to the placement of any Facilities or Power Supplies on City Poles.

## **9.0 MAINTENANCE AND REPAIR.**

9.1 City will maintain the City Poles and repair or replace City Poles as necessary to fulfill its own service requirements. City is not required to maintain any City Poles for a period longer than is necessitated by its own service requirements. In the event that City determines that it will no longer maintain a City Pole upon which any Facility or Power Supply is attached, City will send Licensee sixty (60) days written notice that it will no longer maintain the City Pole. In such event, City may, in its sole discretion, offer Licensee alternative space on another City Pole

for the Facility or Power Supply, provided that such alternative space and City Pole is available, or City may, in its sole discretion and subject to any rights of any joint owner of the City Pole and any other user of the City Pole, offer Licensee the right to purchase City's interest in the subject City Pole pursuant to the terms and conditions set forth in a written offer to Licensee.

9.2 Licensee shall, at its sole cost and expense, maintain its Facilities and Power Supplies in good and safe condition and repair in accord with City's Standards and Specifications and in compliance with all applicable law, statutes, ordinances, rules and regulations, as referenced in Article 7.1 herein. Additionally, Licensee agrees to maintain its Facilities and Power Supplies in such a manner so as not to endanger or interfere with the use of City Poles by City or others granted a right to attach to said City Poles. Upon receipt of any notice from City or any court or governmental entity that any Facility or Power Supply of Licensee is interfering with or endangering any persons, equipment, property or facilities of City or any other party including the general public, Licensee agrees that it will, at its sole cost and expense, immediately take all necessary steps to remedy such danger or interference. In the event Licensee fails to remedy such danger or interference within twenty-four (24) hours after notice thereof from City or any court or governmental entity, City will take all actions it deems necessary or appropriate to remedy such matter, including without limitation the removal from City Poles of any Facility or Power Supply causing such danger or interference. City shall have no liability of any kind or nature whatsoever for any actions taken by City to remedy such danger or interference and Licensee shall pay City upon demand for all Costs of such activities.

9.3 Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition on City with respect to any agreement or arrangement City has heretofore entered into or may enter into in the future with respect to any City Poles. In no event will City be liable for any noise, induced voltages, currents or other interference affecting any of Licensee's Facilities. Except for the Make-Ready work expressly described in the Marked-Up Application, Licensee hereby acknowledges and agrees that City has not agreed to undertake any alterations or improvements to make the City Poles suitable for Licensee's intended use and that Licensee hereby accepts use of the City Poles in their AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS.

## **10. REMOVAL, REPLACEMENT OR RELOCATION.**

10.1 In the event Licensee wishes to remove any of its Facilities or Power Supplies from any City Poles, Licensee shall so notify City in writing and submit an Application describing the location, number and type of Facilities to be removed. City will review and complete the Marked-Up Application and identify thereon any special conditions governing Licensee's removal of the subject Facilities or Power Supplies. Upon Licensee's acceptance and return of the Marked-Up Application, City will issue a Permit authorizing such removal. No refund of any fees or charges previously paid to City shall be made as a result of such removal. Licensee shall notify City in writing within ten (10) days after the completion of such removal work, and no adjustment in the fees due and payable by Licensee hereunder pursuant to Article 12 shall be made until City has received such notice of completion from Licensee and has had an opportunity to field verify the number of City Poles from which Licensee's Facilities or Power Supplies have been removed.

10.2 In the event that it is alleged by a governmental body that Licensee's use of any City Pole hereunder is in violation of any municipal, state or federal law, statute, ordinance, rule or regulation, over which said governmental entity has jurisdiction, or is not authorized by permit, license or other approval required from any governmental body, property owner or joint owner of the Pole, City may elect, in its sole discretion by written notice to Licensee, to revoke any Permit given under this Agreement authorizing Licensee's use of said City Pole, such revocation to be effective upon the sixtieth (60th) day following the date of such notice. In the event City elects to

revoke such Permit, Licensee shall remove the subject Facilities or Power Supplies, at Licensee's sole cost and expense, within sixty (60) days from the date of City's revocation notice. If, however, the governmental entity or property owner providing notice of such violation or unauthorized use requires removal within less than the sixty (60) day time frame, then Licensee shall perform such removal within the time frame set or required by said entity. In the event Licensee fails to perform any such removal, City may, in its sole discretion, and at the sole cost and expense of Licensee, perform such removal within incurring any liability of any kind or nature whatsoever to Licensee, its customers, affiliates, parents, owners or subsidiaries.

10.3 In the event of any emergency that threatens persons or property, City may, in its sole discretion, without prior notice and at Licensee's sole cost and expense, remove any of Licensee's Facilities or Power Supplies. City will give notice subsequent to City's removal of Facilities or Power Supplies as soon as practicable under the circumstances.

10.4 In non-emergency situations, if City determines, in its sole discretion, that its own service or operating requirements, including, but not limited to, considerations of safety, reliability, and engineering, require the removal, relocation, or replacement of any of Licensee's Facilities or Power Supplies, Licensee shall, at its sole cost and expense, effect such removal, relocation, or replacement within sixty (60) days after receipt of such notice from City. If Licensee fails to perform such removal, relocation, or replacement within sixty (60) days after receipt of such notice from City, Licensee shall pay for any expenses City incurs as a result of a return trip made necessary by Licensee's failure to perform the required removal, relocation, or replacement within the thirty day period. Also, City may, in its sole discretion, and at the sole cost and expense of Licensee, perform such removal, relocation or replacement without incurring any liability of any kind or nature whatsoever to Licensee, its customers, affiliates, parents, owners or subsidiaries. Licensee also may request that it transfer any of its Facilities or Power Supplies to any available substitute City Pole, at Licensee's sole cost and expense, which request may be approved or denied by City in its sole discretion.

10.5 As provided in Article 15.4, Licensee shall completely remove its Facilities and Power Supplies from City's Poles no more than one hundred twenty (120) days after the termination of the Agreement, unless the Agreement has been extended for another year or a new agreement covering the City Poles has been executed by the parties hereto. As also provided in Article 15.4, if Licensee fails to remove its Facilities and Power supplies within the required time, City may remove Licensee's Facilities and Power Supplies, at Licensee's expense, from City's Poles and without any liability to City.

## **11.0 INVENTORY**

11.1 City reserves the right to make a field inventory of the area covered by this Agreement for the purpose of verifying the number and location of all or portion of Licensee's Facilities or Power Supplies, as often as conditions warrant, but in any event at least once every five (5) years. City shall give Licensee at least thirty (30) days prior notice of such inventory. Upon request, City will furnish Licensee with a summary report of such inventory within a reasonable time after its completion. If, as the result of such inventory or inventories, City determines that corrections or changes need to be made in order to meet City's service or operating requirements, including, but not limited to, considerations of safety, reliability, or engineering, Licensee will promptly make such corrections or changes at its sole cost and expense. If any such inventory discloses that (a) Licensee has failed to receive a Permit for the attachment or Modification of any of its Facilities or Power Supplies to City Poles, or (b) Licensee is not in compliance with this Agreement with respect to the City Poles to which Licensee's Facilities or Power Supplies are attached, City will bill Licensee for the Cost of such inventory and Licensee

shall pay City such Cost within thirty (30) days from the date of receipt of each such bill rendered by City. Neither the occurrence nor the nonoccurrence of any inventory will relieve Licensee of its duties, obligations or liability under this Agreement.

## 12.0 COMPENSATION

12.1 Fees. Licensee agrees to pay City all fees and charges set forth in this Article within thirty (30) days from the date of receipt of bills from City. Licensee acknowledges and agrees that the level of such fees and charges is based, in part, on the type of services Licensee provides using its Facilities and Power Supplies attached to City's Poles, with different fees owed for CATV Services, Telecommunications Services, Internet Services, or other services, respectively. Accordingly, the fees set forth in Articles 12.1.1, 12.1.2, and 12.1.3 may change if and when there is a change in Licensee Services.

12.1.1 First and Second Year. Licensee represents that, as of the effective date of this Agreement, Licensee intends to provide Telecommunications Services using its Facilities and Power Supplies attached to City's Poles. Accordingly, during the each year of the initial five year term of this Agreement, Licensee shall pay City when billed an annual fee of \$ 20.00 for each Facility attached to a City Pole and \$ 12.00 for each Facility attached to a jointly owned pole.

12.1.2 Subsequent Years. Thereafter, for so long as the Agreement is in effect as a year-to-year Agreement, Licensee shall pay to City, when billed, an annual fee for each Facility attached to a City Pole which fee increases by five percent (5%) per year, said five percent (5%) increase to be applied each year to the new base fee charged in the prior year for each Facility or Power Supply.

12.1.3 Overlashed Facilities. With respect to Facilities overlashed on a third party's Cable installed on City Poles, Licensee shall pay City when billed an annual fee of one-half (1/2) of the fee applicable in any year of the Agreement to any non-overlashed Facility.

12.2 Charge for Unauthorized Facilities or Power Supplies. The attachment of any Facility or Power Supply to City's Poles or the Modification of any such Facility or Power Supply without the approval of City pursuant to the terms of this Agreement, or any prior agreement governing such Facilities or Power Supplies, shall be considered an unauthorized attachment of the Facility or Power Supply. The overlashing of additional Cable by Licensee upon a third party's Cable installed upon City's Poles, and the overlashing of a third party's Cable upon Licensee's Cable installed upon City's Poles, without obtaining a Permit from City, shall also be considered an unauthorized attachment of the Facility. Licensee recognizes that placement of unauthorized Facilities or Power Supplies on and unauthorized Modifications affecting City Poles impose additional burdens, liabilities and costs affecting City's management and maintenance of its electrical distribution system and that such burdens, liabilities and costs undermine City's ability to meet its own operating and service requirements and would be extremely difficult and impracticable to fix or ascertain under presently known and anticipated facts and circumstances. Accordingly, Licensee agrees to pay City as liquidated damages for each unauthorized Facility and each unauthorized Power Supply attached to City's Poles an amount equal to the most recent annual fee under this Agreement times the number of years since City last conducted an inventory of the Facilities and Power Supplies as provided in Article 11.1, or five years, whichever is less. Such charge shall be paid by Licensee without prejudice to any of City's other rights under this Agreement, including City's right to remove such unauthorized Facilities or Power Supplies under the circumstances described elsewhere in this Agreement.

12.3 Charge For Failure To Notify Of Change In Service. Licensee acknowledges and agrees that failure by Licensee to provide the notice of new Licensee Services offered that is

required by Article 4.3 will deprive City of revenue to which it is lawfully entitled under this Agreement. Licensee further acknowledges and agrees that it is, and will be, exceedingly difficult for City to determine, absent Licensee's good faith compliance with such required notification, that Licensee is in fact providing such changed Licensee Services using its Facilities and Power Supplies attached to City's Poles. Accordingly, if City determines that Licensee has failed to provide City with the required notification, Licensee agrees to pay City as liquidated damages the amount of revenue resulting from applying the fees that would otherwise have been applicable to the changed Licensee Service to each and every Licensee Facility and Power Supply attached to City's Poles pursuant to this Agreement back to February 8, 2001, or to the effective date of this Agreement if Licensee did not have any Facilities or Power Supplies attached to City's Poles prior to that date, plus interest at a rate of 1.5 percent (1.5%) per month. Licensee shall owe such fees as liquidated damages with respect to less than all of its Facilities and Power Supplies attached to City's Poles only upon convincing proof that the changed Licensee Services for which notification was owed were in fact offered by Licensee only over a portion of those Licensee Facilities, in which case Licensee shall pay liquidated damages, computed as set forth above and for the period set forth above, only as to the Facilities and Power Supplies proved by Licensee to have actually been used to provide the changed Licensee Services.

12.4 Interest. Licensee agrees to pay interest at the rate of 1.5 percent (1.5%) per month on all monies to be paid under this Agreement from the date such monies are due up to the date paid.

12.5 Taxes. Licensee will be solely responsible for any real estate taxes or assessments levied on any of its equipment, and for any increase in any taxes or assessments levied on City as a result of or in connection with the attachment of the Facilities or Power Supplies to City Poles.

12.6 Obligations To Joint Owner. Payment of the annual fees to City shall not in any way affect Licensee's obligations or duties to pay monies, whether in the form of fees, charges, or otherwise, to any joint owner of a City Pole.

### **13.0 LIABILITY AND INDEMNIFICATION.**

13.1 Notwithstanding any permission granted by City pursuant to any Application, Marked-Up Application or Permit issued hereunder, City retains the right to maintain, replace, relocate and remove City Poles and to maintain, replace, relocate, remove and operate its facilities in such manner as it deems necessary or appropriate to fulfill its own service requirements. Accordingly, City shall not be liable to Licensee, any customer of Licensee, any affiliate of Licensee, or any other person or entity, for any interruption of service or for any interference with the operation of the Facilities or Power Supplies arising in any way out of City's use, operation, maintenance, repair, removal or relocation of its poles or equipment in connection with City's own business needs and requirements. Without limiting the generality of the foregoing, City will not be liable for any noise, induced voltages, currents or other interference in Licensee's Facilities or Power Supplies.

13.2 Licensee agrees to defend and hold harmless City, its parent company, Exelon Corporation, and their respective affiliates, directors, officers, employees, shareholders, agents, contractors, subcontractors, successors and assigns (the "Indemnitees") from and against any and all claims, demands, actions, causes of action, liabilities, judgments, obligations, costs or expenses for any damage to property, or for injury to or death of any person or persons, or any other costs or expenses, including without limitation attorneys fees and costs, related to, arising out of or connected with the placement, use, operation, repair, Modification or removal of any of Licensee's Facilities or Power Supplies; provided, however, that Licensee shall have no obligation hereunder to indemnify any Indemnitees from their own negligence or misconduct. The foregoing

indemnification shall include, but not be limited to, claims made under any worker's compensation law or under any plan for employee's disability and death benefits (including, without limitation, claims and demands that may be asserted by employees, agents, contractors, and subcontractors). Licensee shall immediately notify City of any such claims, demands, damages, injuries or deaths, and shall provide a written report, or other pertinent material or information, if requested. Licensee shall defend the Indemnitees with counsel acceptable to City, in its sole discretion.

13.3 Licensee agrees to indemnify City against any and all claims and demands for damages or losses resulting from any interruption of City's service, the service of Licensee, or the service of City's or Licensee's customers, if such interruption in service arises out of, is caused by or is in any way related to, the exercise by Licensee of the permission granted by City under this Agreement.

13.4 Licensee agrees to be liable for and promptly reimburse City (except to the extent of City's own gross negligence or intentional misconduct), any joint pole owner or any authorized City Pole user for reasonable expenses incurred in repairing or replacing City Poles or any facilities damaged or destroyed, if such damage or destruction is caused by or results from, in whole or in part, the placement, use, operation, repair, Modification or removal of Licensee's Facilities or Power Supplies on City Poles.

13.5 Licensee agrees to pay the costs incurred by City to upgrade or replace City Poles to which Licensee's Facilities or Power Supplies are attached if the upgrade or replacement is required solely by the addition or Modification of Licensee's Facilities or Power supplies, and to pay its proportionate share of the costs incurred by City to upgrade or replace City Poles if the upgrades or replacements directly benefit Licensee and other attachers to such City Poles and are made to meet City service needs, are made at the request of Licensee or an additional attaching party, or are made as a result of governmental order or regulation.

13.6 At all times, Licensee shall conduct its operations and otherwise use or occupy City Poles hereunder in compliance with all applicable Environmental Laws and shall not cause any Hazardous Materials to be introduced to or handled on or about City Poles hereunder. Licensee hereby indemnifies and shall defend and hold harmless City and all other Indemnitees from and against any suits, damages, injuries, costs and expenses of any kind including, without limitation, court costs, attorney and consultant fees, remediation costs, fines and penalties, whether asserted under Environmental Laws or at common law, arising out of or related to (a) any breach by Licensee of the environmental covenants set forth above; (b) any violation hereunder by Licensee, its employees, agents, or contractors of any Environmental Laws; or (c) the presence, release or threatened release of any Hazardous Materials at, on or about City Poles hereunder caused by Licensee, its agents, employees, contractors, or any entity in privity with or providing a benefit to Licensee; provided, however, that Licensee shall have no obligation to so indemnify any Indemnitee from such Indemnitee's own negligence or misconduct. The foregoing covenants and indemnification obligations shall survive any termination of this Agreement.

13.7 Licensee's duties and obligations to indemnify City and the other Indemnitees under this Article 13 shall survive any termination of this Agreement.

#### **14.0 INSURANCE AND BOND.**

See Exhibit B

## 15.0 DEFAULT, TERMINATION AND OTHER REMEDIES.

15.1 Breach of Representations or Warranties. Either party may terminate this Agreement upon the discovery of a breach by the other party of one or more of the representations or warranties set forth in Article 17 of this Agreement.

15.2 Other Breaches. Licensee agrees that City may terminate this Agreement upon the discovery of one or more of the breaches of this Agreement identified in this Article 15.2.

15.2.1 Failure To Notify Of Assignment. Licensee shall be in breach of this Agreement if it fails properly to notify City of any assignment of this Agreement as required by Article 16.0.

15.2.2 Bankruptcy Or Insolvency. Licensee shall be in breach of this Agreement if it fails to make a payment or is at risk of failing to make a payment because it (a) makes any general assignment for the benefit of creditors; (b) initiates or is the subject of a request to initiate a bankruptcy or insolvency proceeding under any provision of law, including the United States Bankruptcy Code; (c) files or is the subject of a filing for the appointment of a receiver; or (d) is rendered or declared insolvent within the meaning of Section 1-201(23) of the Illinois Uniform Commercial Code.

15.2.3 Failure Materially To Comply. Licensee shall be in breach of this Agreement if Licensee fails materially to comply with any of the provisions of this Agreement to be performed or observed by Licensee or uses the Facilities or Power Supplies for purposes other than those specified herein, and such breach continues without cure (a) for thirty (30) days after written notice from City for any monetary defaults; or (b) for the period of time specified in any default notice issued by City for any emergency posing an immediate safety risk to the public or to City workers, employees, or customers or other immediate risk of loss, injury or damage; or (c) for sixty (60) days for any other type of default.

15.2.4 Loss of Franchise. Licensee shall be in breach of this Agreement if at any time Licensee loses a franchise to use the public streets and highways in any area included in Exhibit A to this Agreement.

15.2.5 Failure To Act On Agreement. Licensee shall be in breach of this Agreement should Licensee not place Facilities or Power Supplies or reserve space on City's Poles in any portion of the area included in Exhibit A to this Agreement within six (6) months of the Agreement's Effective Date, or within ninety (90) days of receipt of a Permit from City for the attachment of Facilities or Power Supplies.

15.2.6. Attachment Without A Permit. Licensee shall be in breach of this Agreement if it attaches any Facility or Power Supply to City's Poles without having first obtained a Permit as provided for in Articles 5.0 and 6.0 of this Agreement.

15.3 Rights And Remedies For Breach. In the event Licensee shall be in breach of this Agreement and such breach continues beyond any applicable cure period provided herein, City may exercise any one or more of the following rights and remedies: (a) terminate this entire Agreement or terminate any Permit or Permits given pursuant to this Agreement; (b) take any and all corrective action City deems necessary or appropriate to cure such default and charge the cost thereof to Licensee, together with (i) interest thereon at 1.5 percent (1.5%) per month and (ii) an administrative charge in an amount equal to twenty percent (20%) of the cost of the corrective action, such payment to be made by Licensee upon City's presentment of demand therefor; or (c) exercise any other remedy available to City under this Agreement or at law or in equity.

15.4 Removal Of Licensee Facilities. Upon termination of any Permit to use a City Pole or Poles given pursuant to this Agreement, or upon the termination of this Agreement, City shall have the right, with or without notice to Licensee, to remove all of Licensee's Facilities or Power Supplies from all City Poles affected by such termination. Upon termination of any Permit, Licensee shall have one hundred twenty (120) days to remove its Facilities and Power Supplies from the affected City Poles, and upon termination of the entire Agreement, Licensee shall have one hundred twenty (120) days to remove its Facilities and Power Supplies from City's Poles. City shall have the right without notice to remove all of Licensee's Facilities and Power Supplies from the City Poles to which the Permit applies or from all of City's Poles where the entire Agreement has been terminated if Licensee fails to remove its Facilities and Power Supplies within the specified and applicable time. Licensee shall pay City for all Costs of such removal within ten (10) days after billing. City shall deliver the Facilities and Power Supplies to a location given by Licensee or stipulated by City without incurring any liability for the condition of the Facilities and Power Supplies, or for any other loss, damage or casualty, of any kind or nature whatsoever, incurred or alleged to have been incurred by Licensee arising out of or resulting from the removal of the Facilities and Power Supplies.

15.5 Duties and Obligations Remain. In the event that Licensee is in default or in breach under this Agreement and City elects to terminate Permits granted under this Agreement or the Agreement itself, in whole or in part, or upon any other cause of termination of this Agreement, Licensee shall not be relieved of any of its duties or obligations under this Agreement, so long as any Facility or Power Supply remains on any City Pole.

15.6 Retention Of Administrative Fees. In the event that this Agreement is terminated or voided for any reason, City shall retain all monies therefore paid hereunder as administrative fees incurred in the implementation of this Agreement.

## **16.0 ASSIGNMENT.**

16.1 Licensee may not assign or transfer all or any portion of its rights, privileges and obligations under this Agreement without the prior written consent of City, which consent will not be unreasonably withheld. Licensee agrees that City may, as a condition precedent to granting consent for an assignment or transfer, require renegotiation of the fees set forth in Article 12 of this Agreement or of the insurance and bond requirements set forth in Article 14 of this Agreement. Licensee shall give City not less than sixty (60) days' prior written notice of any proposed assignment or transfer. Licensee recognizes that City will incur administrative and other expenses when it reviews any proposed assignment or transfer of Licensee's interest in this Agreement and Licensee agrees to pay all such reasonable Costs when billed.

16.2 An unauthorized assignment or transfer of this Agreement includes, but is not limited to, Licensee's granting permission or otherwise allowing, explicitly or implicitly, by any act or omission, for any use of the Facilities or Power Supplies for any purpose other than the Licensee Service that is the subject of this Agreement. An unauthorized attachment includes granting permission to or otherwise allowing any party other than Licensee to use Licensee's Facilities or Power supplies, or any portion thereof, which are placed on a City Pole, without City's permission.

16.3 The obligations of Licensee under this Agreement (but, except as otherwise provided in Article 16.1 hereof, not Licensee's rights and privileges hereunder) shall extend to and be binding upon any successors or assigns of Licensee. All right, title and interest of City hereunder shall be binding upon an issue to the benefit of City's successors and assigns.

16.4 Licensee recognizes and agrees that City will incur extra administrative, legal and other expenses if Licensee makes an unauthorized assignment or transfer of this Agreement. Accordingly, Licensee agrees to pay City such Cost when billed. Payment of such Costs shall be made by Licensee in addition, and without prejudice, to all other rights and remedies City may have under this Agreement in connection with such unauthorized assignment or transfer, including, but not limited to, City's right to collect base fees (per Article 12.1) from any such assignee or transferee, City's right to remove or relocate unauthorized Facilities and Power Supplies and City's rights to terminate this Agreement.

16.5 Nothing herein shall be deemed to restrict or limit City's right to assign all or any portion of its right, title or interest in this Agreement.

## **17.0 REPRESENTATIONS AND WARRANTIES.**

17.1 Power and Authority. Each party represents and warrants that (a) it is a municipal corporation duly organized, validly existing and in good standing in its state of organization, or a limited liability company duly organized or authorized to do business and in good standing, in the State of Illinois (b) it is qualified to do business under the laws of the State of Illinois, and (c) it has full power and authority to enter into this Agreement and undertake the responsibilities and obligations contemplated by it in accordance with its terms.

17.2 Enforceability. Each party represents and warrants that this Agreement constitutes a valid and binding obligation of such party and is enforceable against such party in accordance with its terms and conditions. Each party further represents and warrants that it has independently reviewed this Agreement, including the charges set forth in Article 12, and concluded that this Agreement is just, reasonable and equitable.

## **18.0 FORCE MAJEURE.**

18.1 Neither party shall be liable for any delay in performance or inability to perform any non-monetary obligations hereunder if such delay or inability is due to acts or omissions which are not voluntary by such party and beyond such party's reasonable control, including, but not limited to, acts or omissions of any governmental body, civil disturbance, war, fires, acts of nature, labor disputes, shortages of materials and equipment, or the acts or omissions of the other party.

## **19.0 MISCELLANEOUS.**

19.1 Confidential Information. The parties agree that the terms of this Agreement and any other information deemed proprietary and confidential by either party and identified as such and disclosed to the other party in the course of performing under this Agreement shall be held in strictest confidence by the receiving party and shall not be disclosed to any third party (other than the affiliates of the receiving party) without the disclosing party's prior written consent. The obligations imposed herein shall not apply to confidential information which (a) becomes available to the public through no wrongful act of the receiving party, (b) may be published prior to the date hereof, (c) is received from a third party without restriction known to the receiving party and without breach of this Agreement, (d) is independently developed by the receiving party, or (e) is disclosed pursuant to a requirement or request of a governmental agency, subpoena or other legal proceeding.

19.2 Merger. All understandings and agreements, oral or written, heretofore made by and between the parties hereto are merged into this Agreement. This Agreement, and the exhibits

attached hereto, alone fully and completely express the agreement between City and Licensee with respect to the subject matter hereof.

19.3 Prior Agreements Superseded. This Agreement terminates and supersedes any prior agreement, license or joint use affecting City's Poles and Licensee's Facilities and Power Supplies covered hereby as of the date hereof, but such termination shall not reduce or eliminate the obligation of Licensee to make payment of any amounts due to City under any prior agreement.

19.4 Waiver of Terms or Conditions. The failure of City to enforce or insist on compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any right to seek enforcement of such terms or conditions. The acceptance of payment by City of any of the fees or charges set forth in this Agreement shall not constitute a waiver of any breach, default or violation of the terms or conditions of this Agreement. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

19.5 Severability. This Agreement, including, without limitation, the fees set forth in Article 12 or other charges due hereunder, may be subject to the approval of one or more regulatory agencies. If this Agreement is subject to such approval, the parties hereto agree to jointly seek such approval. If such required approval is not granted by any agency, this Agreement shall be considered void. If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstances otherwise shall be held to be invalid or unenforceable under applicable law by any court or governmental body having jurisdiction, such invalidity or unenforceability shall not affect, impair or render invalid or unenforceable any other provision of this Agreement, nor shall it affect the application of such clause, phrase, provision or portion hereof to any other person or circumstances. In the event any provision of this Agreement is so found to be invalid or unenforceable, the parties agree to amend this Agreement by replacing the invalid or unenforceable term with such other provision as will give the fullest possible effect, within the limits of applicable law, to the intention and understandings of the parties as set forth in this Agreement. Notwithstanding the foregoing, in the event that any of the terms and conditions contained in Articles 12 or 13 hereof are determined by a court or governmental body having jurisdiction to be invalid or unenforceable in any material respect, then, at City's option, this Agreement shall be terminated and, in such event, City shall have the right to remove all of Licensee's Facilities and Power Supplies from any or all of the City Poles in the manner provided hereinabove with respect to termination of this Agreement. Further, and notwithstanding the foregoing, if a court of final jurisdiction determines that the Constitutionally required compensatory rates for access to an electric utility's poles are higher than the fees contained in Article 12 of this Agreement, the parties agree that that Constitutionally-required rates shall immediately be substituted herein for the Article 12 fees, with no termination of this Agreement.

19.6 Notice. Unless otherwise directed, all notices required to be given by either party to the other party under this Agreement shall be in writing and shall be deemed sufficient if given in any of the following ways: (a) delivery by a messenger service or private delivery service providing same or next day delivery, (b) sent by United States Certified Mail, return receipt requested, postage prepaid, or (c) by facsimile copy and followed within 24 hours by an original copy deposited in the United States Mail, first class, postage prepaid, to the parties at the addresses set forth herein below. With respect to notification of completion of Make-Ready work (Article 6.6), notice of interference or endangerment (Article 9.2), notice of emergency action (Article 10.3), or such other notice requirements as City and Licensee may agree from time to time to treat as follows, notice may first be made by telephone call or e-mail to the person or persons specified below, to be followed within a reasonable time by a confirmation notice in writing as directed above. The parties and the addresses set forth herein below may be changed by any party by

giving notice to the other party in accordance with this Section 19.6 to the last person and address specified herein below.

**If to: City of Rock Falls**

**City Clerk  
City of Rock Falls  
603 West 10<sup>th</sup> Street  
Rock Falls, IL 61071**

**with a copy to:**

**James Reese, City attorney  
202 East 5<sup>th</sup> Street  
PO Box 400  
Sterling, IL 61081**

**If to (Licensee),**

**with a copy to:**

19.7 Agreement To Do All Things Necessary Or Appropriate. Both parties agree to do all things necessary or appropriate from time to time, including the execution and delivery of such ancillary documents and agreements as City may reasonably require, to carry out the express terms and conditions of this Agreement and the intentions and understandings of the parties as described herein.

19.8 No Partnership Or Joint Venture Created. The parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, City and Licensee. City and Licensee are each independent contractors and nothing contained in this Agreement shall be construed to constitute either party an agent of the other.

19.9 Revision Of Forms. The forms attached hereto are subject to revision by City at any time and at its discretion.

19.10 Renewal Of Other Agreements. In the event Licensee seeks to renew any existing pole attachment agreements with City, other than this Agreement, that involve the attachment by Licensee of its Facilities or Power Supplies to City Poles in other areas where Licensee has been provided a franchise, license, permit or other right to provide Licensee Service, such other pole attachment agreements may be renewed in accordance with the procedures described herein. City may elect, in its discretion, to renew any such other agreement by an amendment to this Agreement, which amendment shall incorporate within the scope of this Agreement the attachment to City Poles of Facilities and Power Supplies of Licensee covered by such other agreement and such other terms and conditions as City may require to give effect to such incorporation.

(continued on next page).

IN WITNESS WHEREOF, the parties to this Agreement by their duly authorized representatives have executed this Agreement to be effective as of the day and year first written above.

**City of Rock Falls, Illinois**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

**Surf Air Wireless, LLC of Illinois/Indiana/Ohio, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**LOCATION OF City POLES**

**Municipalities of:**

## Exhibit B

### **Insurance Requirements**

Licensee agrees to require its contractors, before commencing any work on the Licensed Premises to purchase and maintain, or at the option of Licensee to itself purchase and maintain, at the cost of Licensee or its contractors, a policy or policies of insurance issued by insurance companies authorized to do business in the State of Illinois, having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance) and in a form satisfactory to Licensors as follows:

#### **COVERAGE #1**

Workers' Compensation Insurance with statutory limits, as required by the state in which the work is to be performed, –and Employers' Liability Insurance with limits not less than One Million dollars (\$1,000,000.00) each accident/occurrence

#### **COVERAGE #2**

Commercial General Liability (CGL) Policy or Policies (with coverage consistent with ISO CG 0001 (12 04)) covering all contractors, subcontractors and all their subcontractors with limits not less than Four Million dollars (\$4,000,000.00) per occurrence covering liability for bodily injury and property damage arising from premises, operations, independent contractors, personal injury/advertising injury, blanket contractual liability and products/completed operations for not less than three (3) years from the date the work is accepted. (CGL insurance includes, but is not limited to coverage for claims against Licensors for injuries to employees of Licensee and its contractors or any subcontractors) Licensors shall be added as an Additional Insured providing coverage consistent with ISO Form CG 20 26 11 85 or the combination of ISO Form CG 20 10 10 01 and CG 20 37 10 01.

#### **COVERAGE #3**

Automobile Liability in an amount of not less than one million dollars (\$1,000,000) per accident for bodily injury and property damage, covering all owned, Licensed, rented or non-owned vehicles, which shall include automobile contractual liability coverage.

Policies covering contractors may substitute lower limits for any of the policies listed above, provided that Contractors maintains an umbrella or excess liability policy or policies which provide a total minimum limit of four million dollars (\$4,000,000) per occurrence for general liability and one million dollars (\$1,000,000) for automobile liability, and that all other requirements of this insurance clause are satisfied by such umbrella or excess policy or policies.

Licensee will, in any event, purchase and maintain during the term hereof;

#### COVERAGE #4

- (i) Commercial General Liability (CGL) Insurance (with coverage consistent with ISO CG 00 01 12 04) with a limit of not less than four million dollars (\$4,000,000) per occurrence covering liability for bodily injury and property damage, arising from premises, operations, independent contractors, personal injury/advertising injury, blanket contractual liability and products/completed operations (CGL insurance includes, but is not limited to coverage for claims against Licensor for injuries to employees of Licensee and its contractors or any subcontractors). Licensor shall be added as an Additional Insured providing coverage consistent with ISO Form CG 2026 (11/85) or combination of ISO Form CG 20 10 10 01 and GC20 37 19 91. (ii) Automobile Liability in an amount of not less than \$1,000,000 per accident for bodily injury and property damage, covering all owned, Licensed, rented or non-owned vehicles, which shall include automobile contractual liability coverage.

#### COVERAGE #5

Workers' Compensation Insurance with statutory limits, as required by the state in which the work is to be performed, and Employers' Liability Insurance with limits not less than One Million dollars (\$1,000,000.00) each accident/occurrence.

Licensee may substitute lower limits for any of the policies listed above, provided that Licensee maintains an umbrella or excess liability policy or policies which provide a total minimum limit of \$4,000,000.00 per occurrence for general liability, and that all other requirements of this insurance clause are satisfied by such umbrella or excess policy or policies.

If any work on the Licensed Premises involves or includes Contractor handling, transporting, disposing, or performing work or operations with hazardous substances, contaminants, waste, toxic materials, or any potential pollutants, Licensee and/or contractors shall purchase and maintain pollution legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the Licensed Premises. Coverage shall be maintained in an amount of at least five million dollars (\$5,000,000) per loss and aggregate. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. Licensor shall be included as an additional insured and the policy shall be primary with respect to Licensor as the additional insured.

There shall be furnished to Licensor, prior to commencing the work above described a certificate of insurance showing the issuance of insurance policies pursuant to the requirements contained in Coverages #1, #2, and #3 of this paragraph. Insurance coverage as required herein shall be kept in force until all work has been completed. All policies shall contain a provision that coverages afforded under the policies will not be canceled or material change until at least thirty

(30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to Licensor.

Licensee shall provide evidence of the required insurance coverage under Coverage #4 and #5, which shall be delivered to Licensor upon execution of this document. The insurance under Coverage #4 and #5 shall be kept in force through the term hereof through the above-referred policy, or such subsequent or substitute policy or policies as Licensee may, at its discretion, obtain. Licensee shall also provide Licensor with evidence of all of the insurance required hereunder prior to the effective date of the Lease whenever any insurance policy procured by Licensee hereunder is renewed and whenever Licensee obtains a new insurance policy hereunder.

Insurance coverage provided by Licensee and its contractors shall not include any of the following; any claims made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by Licensor; any endorsement limiting coverage available to Licensor which is otherwise required by this Article; and any policy or endorsement language that (i) negates coverage to Licensor for Licensor's own negligence, (ii) limits the duty to defend Licensor under the policy, (iii) provides coverage to Licensor only if Licensee or its contractors are negligent, (iv) permits recovery of defense costs from any additional insured, or (v) limits the scope of coverage for liability assumed under a contract.

To the extent permitted by applicable Laws, all above-mentioned insurance policies shall provide the following:

- (1) Be primary and non-contributory to any other insurance carried by Licensor
- (2) Contain cross-liability coverage as provided under standard ISO Forms' separation of insureds clause; and
- (3) Provide for a waiver of all rights of subrogation which Licensee's, or its Contractors' insurance carrier might exercise against Licensor; and
- (4) Any Excess or Umbrella liability coverage will not require contribution before it will apply

Licensor hereby reserves the right to amend, correct and change from time-to-time the limits, coverages and forms of policies as may be required from Licensee and/or its contractors.

#### WAIVER OF SUBROGATION

Licensee and its contractors shall waive all rights of subrogation against Licensor under those policies procured in accordance with this Lease.

EXHIBIT C  
APPLICATION



Application No. \_\_\_\_\_

Date Received \_\_\_\_\_

(City of Rock Falls Use Only)

POLE ATTACHMENT APPLICATION

PART 1 (To be completed by Applicant)

Company Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

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

Email Address: \_\_\_\_\_

In accordance with the terms and conditions of the Pole Attachment Agreement dated \_\_\_\_\_, 20\_\_ Between the City of Rock Falls ("City") and \_\_\_\_\_ ("Licensee") Licensee hereby requests permission, with respect to the following:

1. LOCATION OF AFFECTED CITY OF ROCK FALLS POLES

In the area of \_\_\_\_\_  
\_\_\_\_\_

(Attach engineering drawing showing geographic locations of all proposed attachments to the City of Rock Falls Poles including riser location.)

2. NATURE OF REQUEST (Check only one line)

- \_\_\_\_\_ Installation of new Facilities or Power Supplies
- \_\_\_\_\_ Removal of Facilities or Power Supplies
- \_\_\_\_\_ Modification of existing Facilities or Power Supplies
- \_\_\_\_\_ Change in nature of Service to be provided

3. NATURE OF SERVICE TO BE PROVIDED BY ATTACHING ENTITY

\_\_\_\_\_ Telecommunications \_\_\_\_\_ Internet \_\_\_\_\_ CATV  
\_\_\_\_\_ Other (describe) \_\_\_\_\_

4. NUMBER OF AFFECTED POLES  
 A. PROPOSED BY APPLICANT

<u>NUMBER OF AFFECTED POLES</u>	<u>PROPOSED BY APPLICANT</u>	Number of Attachments As a result of Pre-Engineering Walk (City of Rock Falls Use)
Proposed New Wireline Attachments:	City of Rock Falls Poles	_____
	Joint Poles	_____
Proposed New DAS Attachments:	City of Rock Falls Poles	_____
	Joint Poles	_____
Proposed Modifications:	City of Rock Falls Poles	_____
	Joint Poles	_____
Proposed Removal of Attachments:	City of Rock Falls Poles	_____
	Joint Poles	_____

B. DETAILED DESCRIPTION OF PROPOSED FACILITIES OR POWER SUPPLIES

\_\_\_\_\_ Coaxial (Type) (Size) (Quantity) (Stringing Tensions) (Tensile Strength of Strand) (Bundled Configuration) (Width in lbs/ft)

\_\_\_\_\_ Fiber (Type) (Size) (Quantity)

\_\_\_\_\_ Power Supply (Manufacturer) (Model Number) (Dimensions) (Weight) (Output Ratings)

\_\_\_\_\_ Other

(Attach manufacturer's number and specifications if not previously provided)

C. DESCRIPTION OF EQUIPMENT AND HARDWARE TO BE USED FOR THE PROPOSED ATTACHMENTS TO POLES

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**D. DESCRIPTION OF PROPOSED MODIFICATIONS**

_____
_____
_____
_____
_____

The Applicant hereby certifies that the above information is complete and accurate and may be relied upon by City in reviewing this Application for Permit request.

Submitted By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

PART II (To be completed by City of Rock Falls)

City of Rock Falls PL# \_\_\_\_\_

PRELIMINARY ENGINEERING CHARGE \_\_\_\_\_

MAKE READY CONSTRUCTION CHARGES \_\_\_\_\_

OTHER \_\_\_\_\_

CURRENT YEARS FEES \_\_\_\_\_

TAXES (If Applicable) \_\_\_\_\_

TOTAL AMOUNT DUE \_\_\_\_\_

**SEE ATTACHED SUMMARY AND BREAKDOWN OF MAKE READY WORK AND CHARGES  
(If applicable)**

TERMS AND CONDITIONS

1. No attachments of Facilities or Power Supplies, Modifications or removals shall be made prior to the acceptance by the City of Rock Falls of the fully executed Pole Attachment Applications, completion of all required Make Ready work, payment of all applicable fees and issuance of a Permit.
2. The City of Rock Falls acceptance of this Application is made in reliance upon the completeness and accuracy of the information provided by the Applicant in Part I hereof. Any Permit issued by the City of Rock Falls pursuant to this Application shall be limited to the Facilities and Power Supplies as described in this Application.
3. Upon completion of the attachment of Facilities or Power Supplies, Modifications or removals described in the Pole Attachment Application, the total number of Licensee's Facilities or Power Supplies covered by the Agreement shall be \_\_\_\_\_.

**ACCEPTED:**

City of Rock Falls

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PART III (To be completed by Applicant)**

Applicant hereby authorizes the City of Rock Falls to complete all Make Ready work and agrees to pay all Make Ready charges related thereto. Applicant further agrees to be bound by all of the terms and conditions contained in this Pole Attachment Application.

**ACCEPTED:**

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX D**  
**CITY OF ROCK FALLS STANDARDS AND**  
**SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS**

UTILITY POLES

The following engineering and construction practices will be followed by Licensee when making Attachments to City Poles.

- A. All attachments shall be made in accordance with the Applicable Standards as defined in the Pole Attachment Licensing Agreement, Article "I. Definitions".
- B. Clearances
1. Attachment and Cable Clearances: Licensee's Attachments on City Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code (NESC) and in drawings and specifications City may from time to time furnish Licensee.
  2. Service Drop Clearance: The parallel minimum separation between City's service drops and communications service drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches. (See Drawing I-4 of Appendix E)
  3. Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of 12" of separation must be maintained between any other cables. At the pole support, a 12" separation must be maintained between Licensee and any other connection/attachment. (See Drawing I-4)
  4. Service Clearances: A four-inch (4") separation shall be maintained between City's service cable and/or any other Attaching Entity's facilities located on the customer's private property in accordance with the National Electrical Code (NEC).
  5. Vertical Runs on Poles: All Risers on poles, including those for power feed for TV amplifiers, shall be placed on the quarter faces of the pole and shall be covered by a riser guard with a two-inch (2") clearance in any direction from cable, bolts clamps, metal supports and other equipment. Secondary cable providing service to street lights may be covered with non-metallic conduit to allow minimum clearances to communication cables as permitted in the NESC.
  6. Climbing Space: A clear Climbing Space must be maintained at all times on the face of the pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of the City Pole. Licensee's cable/wire Attachments shall be placed on the same side of the pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on pole quarter faces. (See Drawing I-5)
- C. Down Guys and Anchors
1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the City's poles by Licensee's Attachments.
  2. Anchors and guy wires must be installed on each City pole where there is an angle or a dead-end occurs. No proposed anchor can be within four (4) feet of an existing anchor without written permission of City.
  3. Licensee may not attach guy wires to the anchors of the City or third party user without the anchor owner's prior written consent.

4. No Attachment may be installed on a City pole until all required guys and anchors are installed, nor may any Attachment be modified, added to or relocated in such a way as will materially increase the stress or loading on City poles until all required guys and anchors are installed.
5. Licensee's down guys shall be bonded to ground wires of the City's Pole.

D. Certification of Licensee's Design

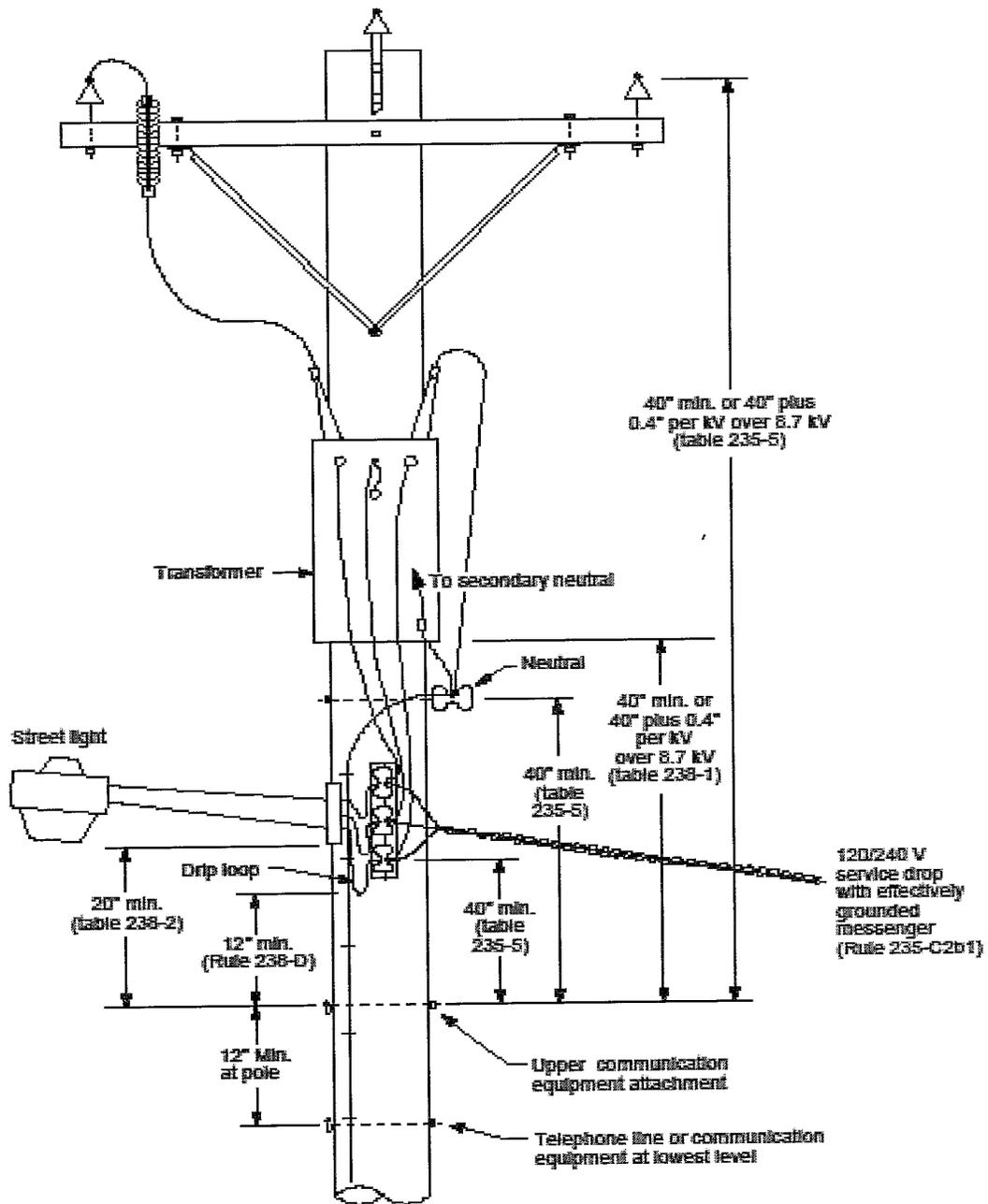
1. The Licensee's Attachment Permit Application must be signed and sealed by a registered professional engineer, certifying that the Licensee's aerial cable design fully complies with the NESC and the City's Construction Standards and any other Federal, State or Local codes and/or requirements.
2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of the City's facilities and other Third Party facilities that exist on the poles.

E. Miscellaneous Requirements

1. Cable Bonding: Licensee's messenger cable shall be bonded to City's pole ground wire at each pole that has a ground wire.
2. Customer Premises: Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.
3. Communication Cables: All Communications cables/wires not owned by City shall be attached within the Communications space that is located 40 inches below the City neutral or the lowest City-owned effectively grounded messenger.
4. Riser Installations: All Licensee's Riser installations shall be placed on metal stand-off brackets. (See Drawing I-3)
5. Tagging: All Licensee's Riser, including all cable, shall be identified with a band type marker or other identification acceptable to City at each Attachment. The marker must identify the Licensee.
6. Safety Zone: No mounting brackets are permitted in the safety zone. The safety zone between communication facilities and supply facilities on the same pole extends horizontally out to the boundaries of the climbing space and working space. The safety zone is measured vertically from the level of the closest surface of the communication facility to the level of the closest surface of the supply facility. The required clearance of the safety zone is measured vertically between the levels of the equipment involved. Stand off bracket installation will not be allowed to meet the 40" clearance requirement. (See Drawing I-5)

F. City Construction Standards

1. Refer to the attached City Construction Standards, or obtain the applicable construction standards from the City in accordance with the affected City's requirements.
2. Apply the City's construction standards in coordination of the applicable NESC, NEC and any other Federal, State or Local code requirements.



**NOTES:**

1. Refer to the attached Utility Construction Standards, or obtain the applicable construction standards from the Utility in accordance with the affected Utility's requirements.
2. Apply the Utility Construction Standards in coordination of the applicable NESC, NEC or Illinois Statute code requirements.
3. See drawing Drawing I-2 for additional notes

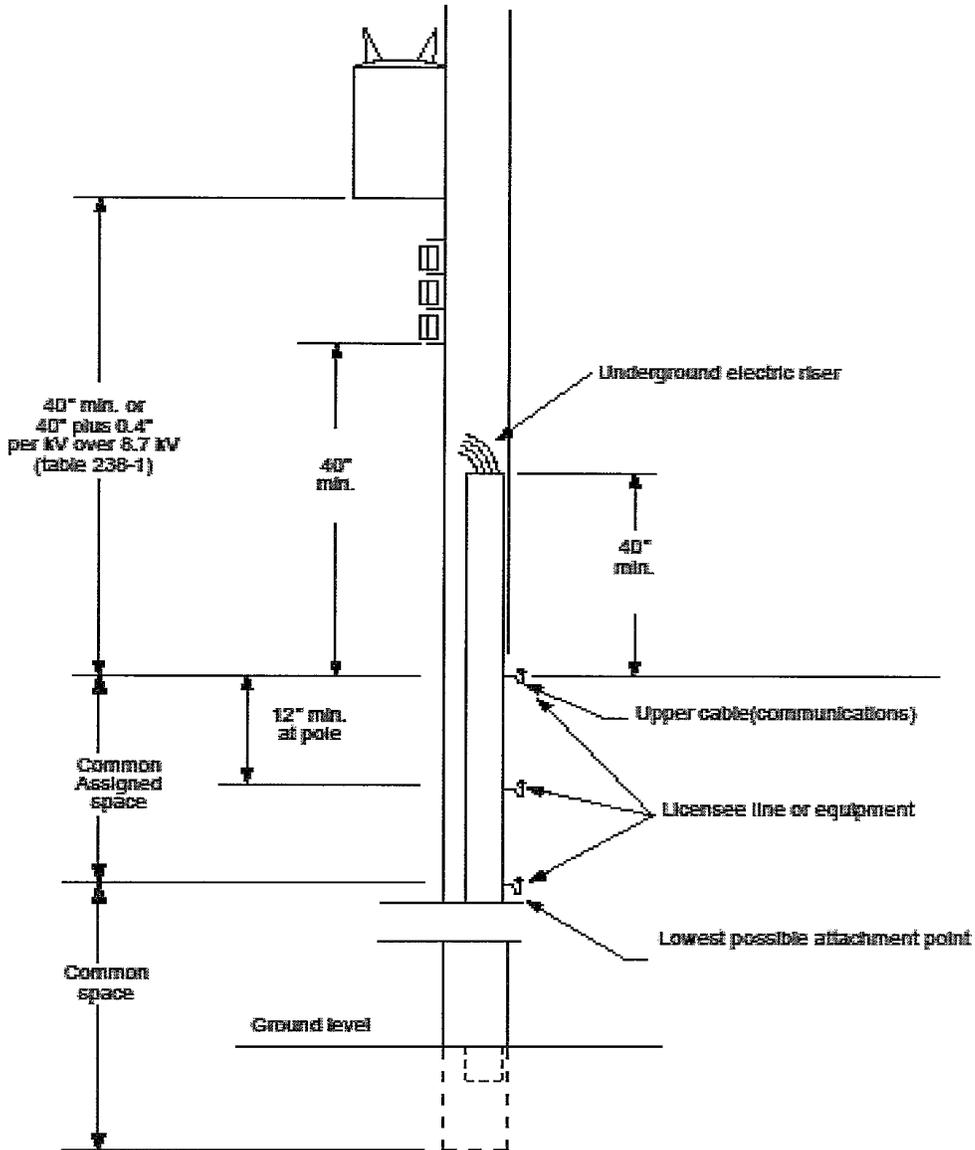
A Issued 1/14/02

**POLE ATTACHMENTS**

**OVERHEAD MINIMUM CLEARANCES**

Drawing is NOT to scale

**I-01**

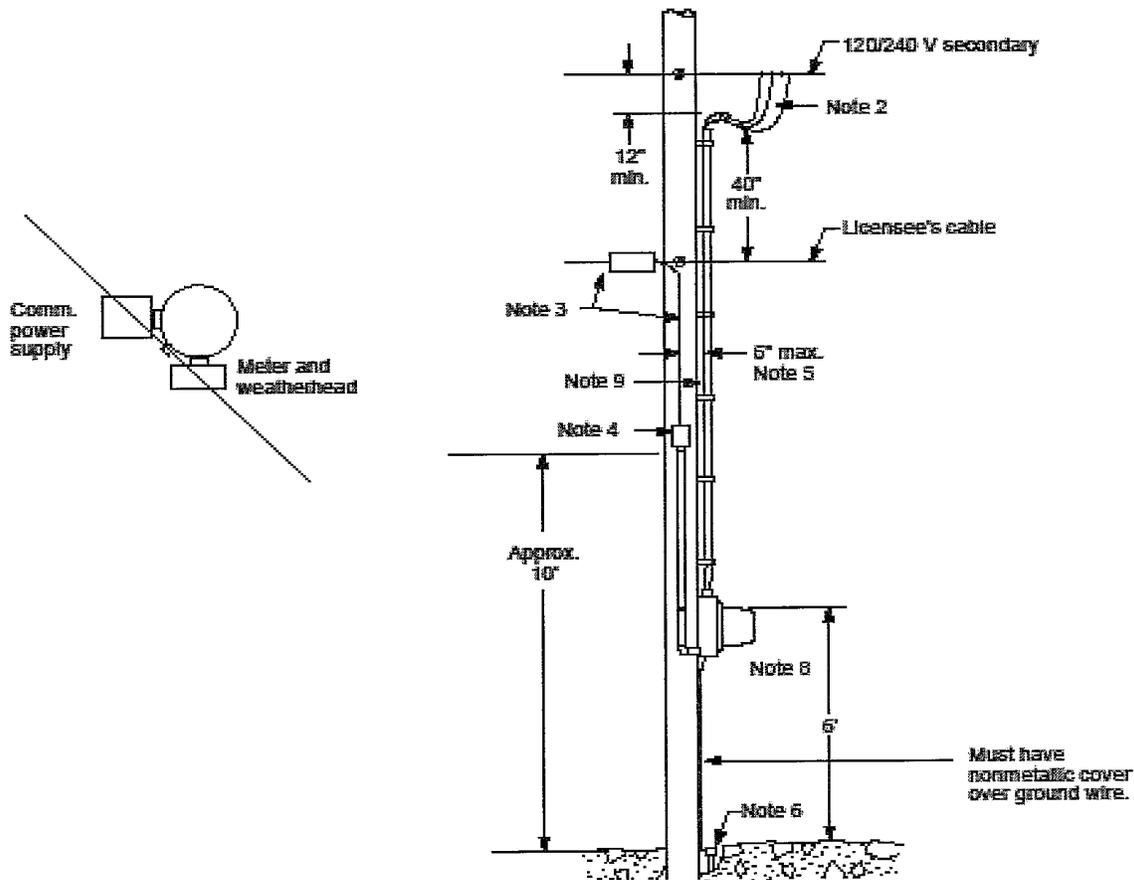


**NOTES:**

1. Separation between vertical runs and any metal parts or through bolts of power or communication equipment shall be at least 2" in any direction. Bolts shall have less than 2" exposed thread.
2. No communications power supply shall be mounted on this pole except by permission of the Utility.
3. The above clearances may have to be increased to allow for code clearance requirement in mid span.
4. Licensee's Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code (NESC) and in drawings and specifications.

A	Issued 1/14/02
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<b>POLE ATTACHMENTS</b>	
<b>OVERHEAD MINIMUM CLEARANCES</b>	
Drawing is NOT to scale	<b>1-02</b>

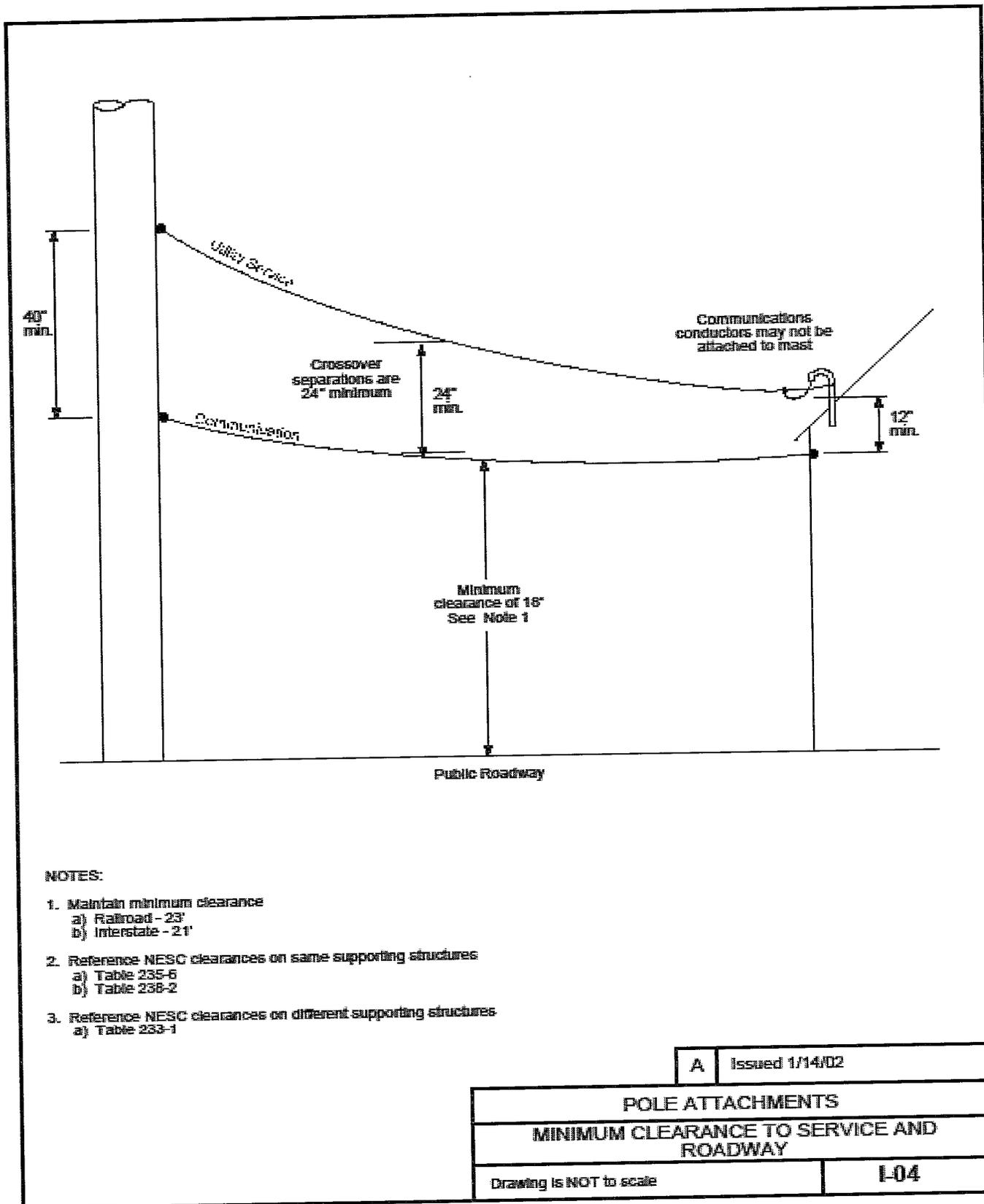


**NOTES:**

1. This installation shall comply with all applicable electrical code and state, city, village, town, and Utility requirements.
2. Service entrance conductors shall extend 30" beyond weatherhead and have 600 volt rated insulation.
3. Communication power cable.
4. Communication power supply and/or disconnect.
5. 6" maximum between service entrance conduit and communications cable, if possible.
6. Grounding shall be in accordance with National Electric Code article 250.
7. Location of all licensee equipment is to be approved by the Utility company.
8. Proof of compliance shall be certified by the appropriate electrical inspector.
9. All users on poles, including those for power feed for licensee's equipment enclosure, will be placed in non-metallic conduit on the quarter faces of the pole.
10. This service detail applies to all commercial users requiring power for pole mounted devices.

A	Issued 1/14/02
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POLE ATTACHMENTS	
POWER SERVICE	
Drawing is NOT to scale	I-03

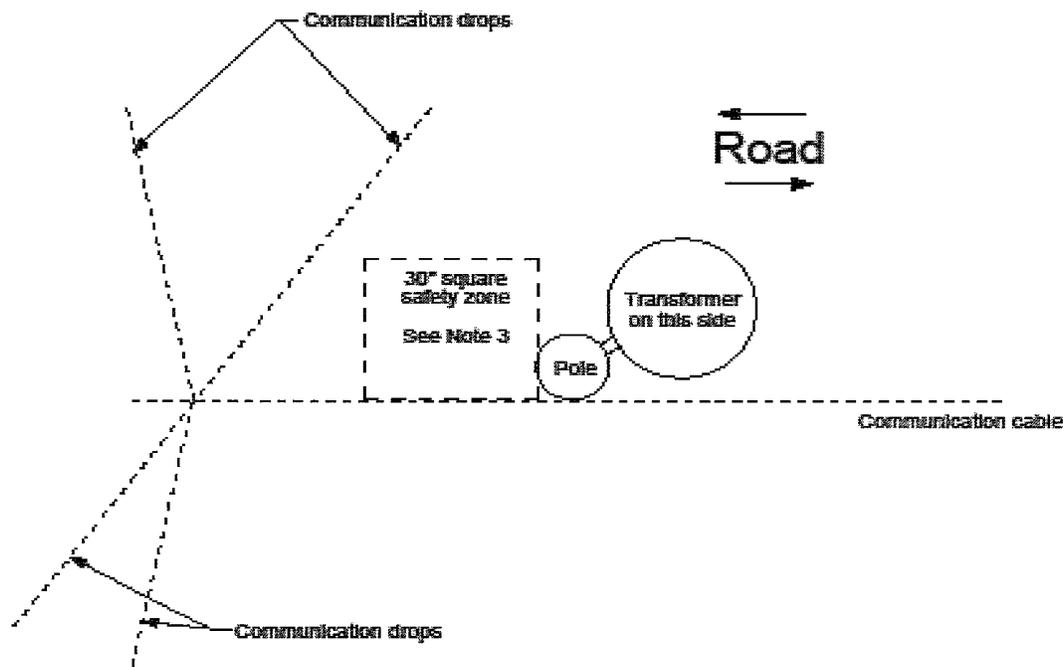


**NOTES:**

1. Maintain minimum clearance
  - a) Railroad - 23'
  - b) Interstate - 21'
2. Reference NESC clearances on same supporting structures
  - a) Table 235-6
  - b) Table 238-2
3. Reference NESC clearances on different supporting structures
  - a) Table 233-1

A	Issued 1/14/02
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<b>POLE ATTACHMENTS</b>	
<b>MINIMUM CLEARANCE TO SERVICE AND ROADWAY</b>	
Drawing is NOT to scale	<b>L-04</b>



**NOTES:**

1. For new cable installations locate cable on the same side of the pole as the Utility's lowest conductor.
2. Standoff brackets to mount cable to pole are not allowed without approval of the Utility.
3. Climbing and workspace through the communication space shall extend from 40" below the lowest communication cable.
4. On transformer poles the communication service drops shall be located so that they originate from the messenger on the side of the pole opposite the transformer.
5. Minimum clearances for climbing and working space shall be followed as per NESC section 236, page 129.

A	Issued 1/14/02
<b>POLE ATTACHMENTS</b>	
<b>ATTACHMENTS AT TRANSFORMER POLES</b>	
Drawing is NOT to scale	<b>I-05</b>

**CITY OF ROCK FALLS – FIBERNET  
DARK FIBER LEASE AGREEMENT**

This Dark Fiber Lease Agreement (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Rock Falls, an Illinois municipal corporation (“Lessor”) and \_\_\_\_\_ (“Lessee”).

WHEREAS, Lessor is the owner of a fiber optic communication system located in the City of Rock Falls, Illinois, which is capable of providing access to high speed internet connection and other uses in relation thereto; and

WHEREAS, Lessor is in the business of, among other things, leasing certain Dark Fibers in the Lessor Network to third parties for purposes of providing high speed internet to such third parties and their customers/consumers; and

WHEREAS, Lessee desires to lease certain Dark Fibers in the Lessor Network and Lessor desires to lease to Lessee the right to use certain Dark Fibers in the Lessor Network subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Lessor and Lessee hereby agree as follows:

Section 1:     **Definitions.** In addition to any terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- A.     “Acceptance” means Lessee’s issuance of an Acceptance Notice or failure to issue a notice of defective Leased Fiber within thirty (30) days after receipt of Optical Time-Domain Reflectometry (“OTDR”) test results from Lessor pursuant to Article III.
- B.     “Acceptance Notice” means Lessee’s notice of acceptance or deemed acceptance of the Leased Fiber pursuant to Article III.
- C.     “Access Point” is the physical location(s) at which Lessee may, subject to required permits and Rights, connect its telecommunications system with the Leased Fiber. Access Points may be a Lessor point of presence, regenerator site, optical amplifier site, or other designated Splice Point, with each Access Point specifically set forth in Exhibit A. Within thirty (30) days after Acceptance, Exhibit A shall be updated to reflect the actual location of the Access Points.
- D.     “Associated Property” shall have the meaning set forth in Section 1.1.
- E.     “Collocation Agreement” shall have the meaning set forth in Section 4.1.
- F.     “Dark Fiber” means Fiber between two specified locations that has no optronics or electronics attached to it.

- G. "Delivery Work" shall mean all work necessary in order to achieve connectivity and to provide OTDR test results to Lessee from Access Point to Access Point pursuant to Article III herein.
- H. "Fiber" means a glass strand or strands which is/are protected by a color coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- I. "Fiber Optic Cable" means a collection of Fibers contained in color-coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler.
- J. "Leased Fiber" means the Dark Fibers/Fiber Optic Cable obtained by Lessee in the Lessor Network as set forth in Exhibit A.
- K. "Lessor Network" means the fiber optic communication system and all Associated Property owned or operated by Lessor.
- L. "Proportionate Share" means the percentage determined by dividing the total number of Leased Fiber by the total number of Fibers in the Lessor Network.
- M. "Rejection Notice" means the notice of rejection of one or more of the Leased Fiber given to Lessor by Lessee pursuant to Article III herein.
- N. "Relocating Authority" shall have the meaning set forth in Section 24.3.
- O. "Rent" means the amount of money Lessee shall pay Lessor for the use of the Leased Fiber.
- P. "Rights" means any and all permits, rights, and right-of-way agreements, easements, licenses, leases, rights or other agreements necessary for the occupancy and use by either party of poles, conduit, cable, wire, physical plant facilities, and/or access to real property underlying the Fiber Optic Cable.
- Q. "Tax" or "Taxes" means all taxes, fees, levies, impositions, imposed duties, charges, or withholdings of any nature, including without limitation ad valorem, real property, gross receipts, taxes and franchise, license and permit fees, together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Leased Fiber, Lessor Network, or any part thereof, by any governmental agency or taxing authority.

## **ARTICLE I LEASE OF DARK FIBER**

**Section 1.1: Lease of Dark Fiber.** Subject to the terms and conditions of this Agreement, Lessor hereby leases to Lessee certain Dark Fibers in the Lessor Network more specifically described on Exhibit A, attached hereto. The lease includes a non-exclusive right to use tangible and intangible Lessor property in order to use the Leased Fiber, including but not limited to cable sheathing, troughing, pedestals, slack containers, and other related equipment necessary for the operation and use of the Leased Fiber as contemplated herein (collectively, the "Associated Property"), but excluding

any electronic or optronic equipment, which shall be provided by Lessee at its sole cost. Lessee agrees to be bound by all applicable laws, regulations and Rights agreements.

**Section 1.2: Non-Interference.** Lessee (or any sub-Lessee) shall not use the Leased Fiber in a manner that materially interferes in any way with, or otherwise adversely affects the use of the Lessor Network, Fibers, Fiber Optic Cable, (or any equipment or element thereof). Lessor shall take reasonable measures not to use any other Fibers in the Lessor Network in a way that materially interferes with or would adversely affect Lessee's use of the Leased Fiber.

**Section 1.3: Lessor Property.** The Parties agree that title to the Leased Fiber, Lessor's Fiber Optic Cable, and the Lessor Network (collectively, the "Lessor Property") is vested solely in Lessor. Lessee shall not individually, or permit others to, access, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Lessor Property without the prior, written consent of Lessor. The Parties agree that no party other than Lessor, or a contractor under the direct supervision of Lessor, shall be permitted to perform maintenance or splicing. Lessor Property is for use in connection with this Agreement and shall not be used for any purpose other than that for which Lessor provided it. In the event that Lessee, or Lessee's representative, agent or any other party associated with Lessee violates this provision, in addition to actual damages sustained by Lessor, exclusive of indirect, incidental, consequential, special, or punitive damages for breach by Lessee, Lessee shall be responsible to pay Lessor for all reasonable damages to Lessor Property and also any ongoing service charges in the event that maintenance or inspection of Lessor Property is required as a result of Lessee's violation of this provision. In no event shall Lessor be liable to Lessee or any other entity for interruption of service or for any other loss, cost or damage caused or related to Lessee's unauthorized tampering with the Lessor Property. In the event of any violation of this provision, Lessor reserves the right to terminate this Agreement, and Lessee shall forfeit all monies paid by Lessee hereunder to date.

## ARTICLE II TERM

**Section 2.1: Term of Agreement.** The initial term of this Agreement shall commence on the Effective Date (as defined in Section 3.3) and shall continue thereafter for the period of time set forth in Exhibit A unless sooner terminated as provided below (all of the foregoing, the "Initial Term").

**Section 2.2: Renewal Terms.** Either party may terminate this Agreement at the end of the Initial Term by giving written notice of such termination to the other party at least ninety (90) days prior to the end of such term. If neither party gives such notice of termination, this Agreement shall automatically continue in force from year to year until terminated by either party upon ninety (90) days written notice (each a "Renewal Term"). The Initial Term and any applicable Renewal Term(s) are collectively referred to herein as the "Term".

**Section 2.3: Survival of Certain Obligations.** The expiration or termination of this Agreement shall not affect the rights or obligations of any party with respect to any payments of costs incurred prior to the date of termination or pursuant to Article IX (Taxes); Article X (Liability); Article XVI (Default); and Article XXIII (Rights).

**Section 2.4: Termination/Expiration; Restoration.** Within sixty (60) days from the expiration or earlier termination of this Agreement, Lessee shall remove, or cause to be removed, all Lessee owned Fiber Optic Cable and related equipment used in connection with Lessee's use of the Leased Fiber (all of the foregoing, collectively, the "Lessee Property"), and shall return the Access

Point, Lessor Fiber Optic Cable, and Associated Property used in connection with the Leased Fiber to substantially the same condition as it was in as of the Effective Date. Lessee shall provide Lessor with reasonable notice of its intended removal process, including the dates and times during which Lessee will remove or anticipates removing Lessee Property, in order for Lessor to supervise the same for compliance with the terms of this Agreement.

### ARTICLE III ACCEPTANCE AND DOCUMENTATION

**Section 3.1: Acceptance.** Lessee shall be deemed to have accepted and to be in possession of the Leased Fiber upon the Effective Date subject to, and after completion of, the procedures set forth below.

**Section 3.2: Test Results.** Lessor shall complete the Delivery Work and provide Access Point to Access Point OTDR test results for the Leased Fiber. In addition, Lessee may perform a visual inspection, subject to any relevant Rights agreements, of all above-ground Access Points and visible Lessor Fiber Optic Cable construction. Within thirty (30) days after receiving the Leased Fiber test results, Lessee shall (i) determine whether the Leased Fiber test results conform to the requirements of the Testing and Acceptance Standards attached hereto as Exhibit B, and (ii) provide an Acceptance/Rejection Notice in the form of the attached Exhibit C. Issuance of an Acceptance Notice or failure to issue an Acceptance/Rejection Notice within the thirty (30) day period shall constitute Lessee's unconditional and irrevocable Acceptance of the Leased Fiber for all purposes under this Agreement.

**Section 3.3: Acceptance/Rejection Procedure.** If Lessee rejects the Leased Fiber by providing a Rejection Notice within the applicable thirty (30) day period in accordance with Section 3.2, upon receipt thereof, Lessor shall promptly undertake to investigate, and if necessary correct, any deficiency or non-conformity in the Leased Fiber. Thereafter, Lessor shall again conduct testing of the Leased Fiber from Access Point to Access Point. The foregoing procedure, as described in Section 3.2, shall apply again and successively thereafter until Lessor has remedied all material defects or significant failures and Lessor has received written notice from Lessee that the Leased Fiber meets the requirements of this Agreement. However, Lessee shall deliver to Lessor any subsequent Rejection Notices after the initial thirty (30) day period within thirty (30) business days after receipt of the relevant test results from Lessor, or Lessee shall be deemed to have accepted the Leased Fiber.

If Lessee issues a Rejection Notice where Lessor reasonably believes the Leased Fiber test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing, sharing the cost equally, to determine whether the test results conform to specifications. Lessee shall not unreasonably withhold its acceptance of the Leased Fiber. The date of acceptance of the Leased Fiber shall constitute the "Effective Date."

**Section 3.4: Record Drawings.** Upon request, but not before one hundred twenty (120) days after Acceptance, Lessor shall provide record drawings regarding the as-built Fiber Optic Cable containing the Leased Fiber. The record drawings shall contain the technical specifications of the Leased Fiber, associated splices and other details consistent with industry standards. At the request of Lessee, and at Lessee's cost, the record drawings may also be provided in electronic format if possible using reasonable efforts.

**ARTICLE IV  
PERMITS, RIGHTS FEES, AND COLLOCATION AGREEMENTS**

**Section 4.1: Collocation.** Lessee shall be responsible for entering into any collocation agreements with local exchange carriers and interexchange carriers to use its Leased Fiber. In the event that Lessee wishes to co-locate in Lessor facilities, or in facilities owned by any third party as a sub-tenant Lessee of Lessor, the parties shall enter into a separate collocation agreement for each site substantially in the form of a Collocation Services Addendum (a "Collocation Agreement", which may be attached as Exhibit D subject to obtaining any required third party consents, including the consent of any landlords of Lessor. In the event that Lessor, in its discretion, decommissions any collocation site, Lessor will not be responsible for any costs associated with removal or relocation of Lessee's facilities or the Leased Fiber.

**Section 4.2: Permits.** Lessee shall be responsible for the appropriate government filings, licenses, or other requirements to place the Leased Fiber into operation, including, but not limited to any necessary municipal licenses and/or franchise agreements other than those Rights agreements discussed in Article XXIII herein and which shall remain the responsibility of Lessor.

**Section 4.3: Rights Fees.** Consistent with Article IX herein, Lessee shall pay its Proportionate Share of Rights fees as required from time to time by property owners, government agencies, taxing authorities, or otherwise imposed by law or contract and which relate to Lessor's Fiber Optic Cable containing the Leased Fiber. Upon written request therefor, Lessor shall provide a reasonable accounting for same.

**ARTICLE V  
PAYMENT**

**Section 5.1: Rent.** Upon Acceptance of the Leased Fiber pursuant to the procedures set forth in Article III herein, Lessee shall pay to Lessor the Rent, all upon such terms as set forth in Exhibit A.

**Section 5.2: Method of Payment.** All payments to Lessor set forth in this Agreement, except as otherwise provided herein, are due and payable within thirty (30) days of Lessee's receipt of an invoice for the same.

**Section 5.3: Overdue Payments.** If Lessee fails to make any payment under this Agreement when due, such amount shall accrue interest from the date such payment is due until paid, including accrued interest compounded monthly, at an annual rate of six percent (6%). If the aforementioned rate exceeds the maximum rate allowed by applicable law, then the interest rate made applicable herein shall be the maximum rate allowed by law.

**ARTICLE VI  
MAINTENANCE AND REPAIRS**

**Section 6.1: Procedures.** The escalation and call-out list for maintenance and repair communications is set forth on Exhibit E. Lessor warrants that the Leased Fiber will be maintained in accordance with prevailing telecommunications industry standards, and with the Routine Maintenance Standards set forth in the attached Exhibit F.

**Section 6.2: Routine and Emergency Maintenance.** All routine maintenance and repair functions and emergency maintenance and repair functions, including “one-call” responses, cable locate services, and necessary relocation of the Lessor Fiber Optic Cable containing the Leased Fiber, shall be performed by Lessor or its designee.

(a) **Emergency Maintenance.** Lessor shall respond to any failure, interruption or impairment in the operation of the Leased Fiber within four (4) hours after receiving a report of any such failure, interruption or impairment. Lessor shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the Leased Fiber within eight (8) hours.

(b) **Routine Maintenance.** Lessor shall schedule and perform periodic maintenance and repair checks and services as set forth in the Routine Maintenance Standards (Exhibit F). Additional maintenance may be performed from time to time on the Leased Fiber at Lessor reasonable discretion, or upon Lessee’s request with reasonable advance notice to Lessor.

**Section 6.3: Notice of Repair.** Except when implementation of an emergency repair situation would be delayed by the following notice requirements, Lessor shall provide advance notice to Lessee of maintenance or repairs that may affect the Leased Fiber.

(a) **Emergency Maintenance.** Lessor shall provide at least two (2) hours advance notice regarding repairs that may affect Lessee’s Leased Fiber. Notice shall be given in the method specified for Routine Maintenance in subsection (b) below.

(b) **Routine Maintenance.** Lessor shall use its best efforts provide at least ten (10) calendar days advance notice regarding any maintenance or repairs that may affect Lessee’s Leased Fiber by submitting an email notification to Lessee.

**Section 6.5: Maintenance of Relocated Fibers.** In the event that Lessee acquires a leasehold interest in relocated fibers pursuant to this Agreement, Lessor shall continue to provide maintenance and repair services in the replacement fibers according to the terms herein.

## **ARTICLE VII SPLICING**

**Section 7.1: Splicing by Lessor Only.** Upon Acceptance of the Leased Fiber, Lessee’s lateral or other Fibers beyond the Access Points may be spliced into the Lessor Fiber Optic Cable at the Access Points pursuant to the procedures set forth on Exhibit B. In order to maintain the integrity of Lessor’s Fiber Optic Cable and Lessor’s Network, Lessor, or a contractor operating under its direction, shall perform all splicing performed on the Lessor Fiber Optic Cable at the Access Points, at Lessee’s expense.

## **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

**Section 8.1: Representations and Warranties.** Each party represents and warrants to the other with respect to the rights and obligations contained herein:

- (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) this Agreement constitutes a legal, valid, binding obligation enforceable against such party in accordance with its terms; and
- (c) the execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

**Section 8.2: Limitation on Liability and Disclaimer of Warranties.** LESSOR WARRANTS THAT LESSOR'S FIBER OPTIC CABLE AND FIBERS SHALL HAVE BEEN CONSTRUCTED IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS AND SHALL BE FREE OF MATERIAL DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF THIRTY (30) DAYS FROM ACCEPTANCE THEREOF BY LESSEE. LESSOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO LESSOR'S FIBER OPTIC CABLE OR THE LEASED FIBER. THE FOREGOING WARRANTY CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO LESSOR'S FIBER OPTIC CABLE AND THE LEASED FIBER. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LESSOR SHALL IN NO EVENT BE LIABLE TO LESSEE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER FOR ANY REASON HEREUNDER.

**Section 8.3: Vendor Warranties.** In addition to the foregoing limited warranties, Lessor hereby assigns to Lessee, and Lessee shall have the benefit of, any and all vendors', manufacturers', contractors' and suppliers' warranties with respect to the material in the Fiber Optic Cable, Fiber, and/or associated property supplied by Lessor.

## ARTICLE IX TAXES

**Section 9.1: Lessee Responsibility.** Upon Lessee's Acceptance of the Leased Fiber, Lessee shall be responsible for any and all sales, use, income, gross receipts, real or personal property or other Tax imposed on Lessor due to Lessee's use of the Leased Fiber.

**Section 9.2: Lessor Responsibility.** Lessor shall be responsible for and shall timely pay any and all Taxes and impositions with respect to the construction or operation of Lessor's Network, which Taxes or impositions are imposed or assessed during the Term with respect to any of Lessor's Fiber Optic Cable subject to this Agreement. Notwithstanding the foregoing obligations, Lessor shall have the right to challenge any such Tax or imposition so long as the challenge of such Tax or imposition does not materially adversely affect the rights to be delivered to Lessee pursuant hereto.

**Section 9.3: Tax Cooperation.** Lessor and Lessee acknowledge and agree that it is their mutual objective and intent to (i) minimize, to the extent feasible, the administrative expenses associated with and the aggregate Taxes and impositions payable with respect to this Agreement and the Leased Fiber and (ii) share such Taxes according to their respective interests in the Leased Fiber

and Lessor's Fiber Optic Cable, and that they will cooperate with each other and coordinate their mutual efforts to achieve such objectives in accordance with the provisions of this Article.

**Section 9.4: Payment Exclusive of Taxes.** All payments made by Lessee to Lessor hereunder shall be made without any deduction or withholding for or on account of any Tax, duty or other charges of whatever nature imposed by any taxing or government authority.

## **ARTICLE X LIABILITY**

**Section 10.1: Limitation of Liability.** Neither Lessor nor Lessee shall be liable to the other for any indirect, special, punitive or consequential damages, including, but not limited to, any claim from any customer for loss of services, arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either party hereto, its directors, officers, employees, servants, elected officials, contractors and/or agents. Both Lessor and Lessee shall include in any agreement with any third party relating to the use of Lessor's Fiber Optic Cable or Lessee's Leased Fiber a waiver by such third party of any claim for indirect, special, punitive or consequential damages, including, but not limited to, any claim from any client or customer for loss of services, arising out of or as a result of any act or omission by either party hereto, its directors, officers, employees, servants, contractors and/or agents.

**Section 10.2: Lessor Indemnification.** Subject to the provisions of Section 10.1, Lessor hereby agrees to indemnify, defend, protect and hold harmless Lessee and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any person, tangible property or facilities of any person, including reasonable attorneys' fees and costs, to the extent arising out of or resulting from the negligence or willful misconduct of Lessor, its officers, employees, servants, affiliates, and agents arising out of or in connection with the performance or omission by Lessor of its obligations or the exercise by Lessor of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Lessor of any regulation, rule, statute or court order of any governmental authority in connection with the performance or omission by Lessor of its obligations or the exercise by Lessor of its rights under this Agreement.

**Section 10.3: Lessee Indemnification.** Subject to the provisions of Section 10.1, Lessee hereby agrees to indemnify, defend, protect and hold harmless Lessor, and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any person, tangible property or facilities of any person, including reasonable attorneys' fees and costs, to the extent arising out of or resulting from the negligence or willful misconduct of Lessee, its officers, employees, servants, affiliates, and agents arising out of or in connection with the performance or omission by Lessee of its obligations or the exercise by Lessee of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Lessee of any regulation, rule, statute or court order of any governmental authority in connection with the performance or omission by Lessee of its obligations or the exercise by Lessee of its rights under this Agreement.

**Section 10.4: Notice of Claims.** Lessor and Lessee agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

**Section 10.5: Actions Against Third Parties.** Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the operation or use of Lessor's Fiber Optic Cable, or any of the Leased Fiber; and each party hereto shall assign such rights or claims, execute such documents and take whatever actions as may be reasonable and necessary to enable the injured party to pursue any such action against such third party.

**Section 10.6: Survival of Indemnifications.** Lessor and Lessee each expressly recognize and agree that its obligation to indemnify, defend, protect and hold the other harmless is not a material obligation to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to so indemnify, defend, protect and save the other harmless, the injured party hereby expressly recognizes that its sole remedy in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration or termination of this Agreement for a period of one (1) year.

## **ARTICLE XI FORCE MAJEURE**

**Section 11.1: Force Majeure.** The obligations of the parties (except for the payment of money hereunder by Lessee) are subject to force majeure and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto. The excused party shall use its best efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification of any such event or cause shall in all cases be given by the excused party to the other and, when possible, of the estimated duration.

## **ARTICLE XII RELOCATION OF CABLE**

**Section 12.1: Relocation.** If after the Effective Date, Lessor is required to, or reasonably determines that it is required to, relocate or replace its Fiber Optic Cable or any of the appurtenant facilities used or required in providing the Leased Fiber, (whether by act of nature, government, or Lessor of any Right) then, so long as such work is not necessitated by a breach of Lessor's obligations hereunder, Lessee shall reimburse Lessor for Lessee's Proportionate Share of such costs, including, without limitation, Fiber Optic Cable acquisition, splicing, and testing, including overhead. Lessor, upon written request, shall deliver to Lessee updated record drawings with respect to any relocated portion of the Fiber Optic Cable upon request but no earlier than one hundred twenty (120) days following such relocation. Upon completion of any such relocation and payment therefor by Lessee, Lessee shall be deemed have a leasehold interest in and to the replacement Fibers as set forth in Article I herein.

**Section 12.2: Notice of Relocation.** Lessor shall give Lessee thirty (30) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to use for such relocation.

**Section 12.3: Right to Review.** Lessor shall have the right to determine the timing, means, method and extent of any relocation hereunder; provided however, that Lessee shall have the right to review the relocation plans of Lessor fourteen (14) days prior to any relocation and shall have the right to have a representative present at the time Lessor relocates the Fiber Optic Cable containing the Leased Fiber.

### **ARTICLE XIII INSURANCE**

**Section 13.1: Insurance Requirements.** Each Party, and any contractor employed by the Party to work on the Fiber Optic Cable and/or Fibers, shall maintain insurance for the duration of this Agreement, and for three (3) years after the termination of this Agreement (in the case of Lessee) or for three (3) years after the termination of a contractor's work on the Leased Fiber and/or Lessor's Fiber Optic Cable (in the case of a contractor), as follows:

(a) Workers' Compensation Insurance in such amounts as may be required by the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$1,000,000 for each accident, including occupational disease coverage with limits of \$1,000,000 for each employee, with a \$1,000,000 policy limit.

(b) Comprehensive General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$1,000,000 each person and \$1,000,000 each accident, and Property Damage - \$1,000,000 each accident.

(c) Automobile Liability Insurance for owned, hired and non-owned autos: \$1,000,000 combined single limit bodily injury/property damage.

(d) Excess or Umbrella Insurance applicable to all of the coverages required in this section, except for the Workers' Compensation Insurance required in subparagraph (a) above (but such coverage shall be applicable to the required Employers Liability Insurance), with policy limits of at least \$2,000,000 per occurrence.

**Section 13.2: Lessor as Additional Insured.** Lessor shall be included as an additional insured on a primary, non-contributory basis on all policies specified in Section 13.1. Such additional insurance shall apply to any and all claims arising out of Lessor's or a contractor's work, operations or products; additional insurance provisions which apply only to claims arising out of the named insured's negligence or which otherwise apply only to vicarious liability are not acceptable.

**Section 13.3: Proof of Insurance.** Failure of either Party to enforce the insurance requirements of this Article XIII shall not relieve the Party of its obligation to maintain the required coverage. Upon request, either Party shall provide proof of insurance to the other. Unless otherwise agreed in writing, all insurance policies required shall be obtained and maintained with companies rated A or better by Best's Key Guide.

## **ARTICLE XIV CONDEMNATION**

**Section 14.1: Notice of Taking.** Upon its receipt of a formal notice of condemnation or taking with respect to Lessor's Fiber Optic Cable or the Rights in or upon which the Lessor's Fiber Optic Cable has been installed, Lessor shall notify Lessee within thirty (30) days of any such condemnation proceeding filed against Lessor's Fiber Optic Cable, including the Leased Fiber, or the Rights in or upon which the Leased Fiber have been installed.

**Section 14.2: Costs.** It is expressly recognized and understood by Lessee that relocation costs resulting from any such condemnation proceeding may not be fully reimbursed by the condemning authority and, if Lessor relocates the Leased Fiber, Lessee shall pay its Proportionate Share of all costs associated with the relocation of the Leased Fiber in excess of such costs which were reimbursed by the condemning authority. Notwithstanding, if the Leased Fiber are relocated by Lessor, Lessee shall pay to Lessor all condemnation awards given to Lessee, if any, that relate to the relocation of the Leased Fiber and thereafter Lessee shall be deemed to have a leasehold interest in and to the replacement Fibers as set forth in Article I herein.

## **ARTICLE XV CONFIDENTIALITY**

**Section 15.1: Confidential Information.** Lessor and Lessee shall agree to keep the terms and substance of this Agreement confidential, and shall refrain from using or disclosing any confidential information of the other party that may be shared pursuant to this Agreement for any purpose not specifically authorized herein. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information that (1) is publicly available or in the public domain at the time disclosed to the Receiving Party; (2) is or becomes publicly available or enters the public domain through no fault of the Receiving Party or its representatives; (3) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations with respect thereto; (4) is already in the receiving party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (5) is independently developed by the receiving party; (6) is approved for release or disclosure by the disclosing party without restriction; or (7) is required by law or court order to be disclosed, in which event the receiving party shall immediately notify the disclosing party in writing in order to enable the disclosing party to take appropriate measures to protect the confidentiality of the confidential information. The parties agree and acknowledge that Lessor is a governmental body, and as such, is subject to comply with certain disclosures of information pursuant to the Freedom of Information Act (FOIA) and such other statutory requirements such as the Open Meetings Act (OMA). It is hereby expressly agreed that Lessor shall not be liable to Lessee, and it shall not be considered a breach of this Agreement, in the event Lessor is required to disclose certain information that may consist of Confidential Information pursuant to the OMA or any lawful FOIA request. The foregoing exceptions relating to FOIA and OMA shall similarly apply to Lessee to the extent said Lessee is a governmental body subject to such laws.

## **ARTICLE XVI DEFAULT**

**Section 16.1: Notice and Cure.** Neither party shall be in default under this Agreement unless and until the other party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within ten (10) days after written receipt of such



With a copy to:

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**ARTICLE XVIII  
ASSIGNMENT, SUCCESSION**

Section 18.1: Assignment. Lessee shall not assign this Agreement, in whole or in part, to any other party without prior written notice to and written consent of Lessor, in Lessor's sole and absolute discretion.

Section 18.2: Binding Effect. Subject to the provisions of this Article, each of the parties' respective rights and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

**ARTICLE XIX  
GOVERNING LAW**

Section 19.1: Prior Laws and Agreements. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles. Venue shall be appropriate in a court of competent jurisdiction residing in Whiteside County, Illinois.

**ARTICLE XX  
ACKNOWLEDGEMENT REGARDING USE AND ENCUMBRANCES**

Section 20.1: No Encumbrances. Lessee agrees and acknowledges that it has no right to use any of the Fibers, other than the Leased Fiber, included in the Lessor Fiber Optic Cable or otherwise incorporated into Lessor's Network and that Lessee shall keep any and all of Lessor's Network, other than the Leased Fiber, free from any liens, rights or claims of any third parties whatsoever.

**ARTICLE XXI  
NO PARTNERSHIP/JOINT VENTURE**

Section 21.1: No Partnership. The parties agree that this Agreement does not create a partnership between, or a joint venture of the Lessor and Lessee.

**ARTICLE XXII  
OPERATIONS**

Section 22.1: Responsibility for Operations. Subject to the provisions of this Agreement, each party shall have responsibility for determining any network and service configurations or designs, routing configurations, rearrangement or consolidation of channels or circuits and all related function with regard to the use of that party's Fiber.

Section 22.2: Responsibility for Optronics. Lessee acknowledges and agrees that Lessor is not supplying nor is Lessor obligated to supply to Lessee any optronics or electronics or optical or electrical equipment at any Lessee site, all of which are the sole responsibility of Lessee; nor is Lessor responsible for performing any work other than as specified in this Agreement or for providing other facilities, including, without limitation, generators, batteries, air conditioners, fire protection, and monitoring and testing equipment at any Lessee site, unless specifically otherwise agreed in writing.

## ARTICLE XXIII RIGHTS

Section 23.1: Required Rights. Lessor agrees to obtain and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary for Lessor to obtain in order to permit Lessor to construct, install and keep installed, and maintain the Leased Fiber in accordance with this Agreement and to convey the leasehold interest in the Leased Fiber to Lessee and all other rights under this Agreement (collectively, the “**Required Rights**”). To the extent necessary, Lessee shall obtain, prior to the commencement of the Term, and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations, franchises and other approvals which are necessary for Lessee to obtain in order to permit Lessor to grant the leasehold interest to Lessee and for Lessee to use the Leased Fiber.

Section 23.2: Notice; Cure. In the event Lessor shall receive notice from any Lessor or provider of a Required Right that Lessor has failed to observe or perform its obligations under such Required Right, Lessor shall give written notice to Lessee and Lessee may, at its option and after providing Lessor with a reasonable opportunity to cure the same, subject to the terms and provisions of the Required Right and the ability of third parties to cure defaults of Lessor thereunder, cure or correct such failure.

Section 23.3: Relocation. If Lessor is required (i) by any governmental authority under the power of eminent domain or otherwise; (ii) by the Lessor or provider of any Required Right; (iii) by any other person having the authority to so require (each a “**Relocating Authority**”); or (iv) by the occurrence of any force majeure event, to relocate the Fiber Optic Cable, Fibers, or associated equipment, Lessor shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. Lessee shall be kept fully informed of all determinations made by Lessor in connection with such relocation, and any such relocation shall be constructed substantially in accordance with the specifications set forth herein, shall incorporate Fiber meeting or exceeding the specifications set forth herein, and be subject to Acceptance testing.

Section 23.4: Right to Contest. Lessor shall have the right to contest any legal or equitable challenge relating to the Rights. If Lessee agrees in writing to join Lessor in any such contest the out-of-pocket costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by Lessor in any such contest shall be shared by Lessee and Lessor by their Proportionate Shares.

## ARTICLE XXIV MISCELLANEOUS

Section 24.1: **Headings.** The headings of the Articles and Sections in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Agreement.

Section 24.2: **Construction.** In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

Section 24.3: **Severability.** No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any Article or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that Article or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such Article or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement section or clause that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

Section 24.4: **Entire Agreement; Amendment.** This Agreement, and any Exhibits referenced and attached hereto or to be attached hereto, including any other agreement or exhibit incorporated by reference, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written. This Agreement may be amended only by a written instrument executed by the party against whom enforcement of the modification is sought.

Section 24.5: **Non-Waiver.** No failure to exercise and no delay in exercising, on the part of either party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.

Section 24.6: **Performance.** All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner.

Section 24.7: **Well Known Meanings.** Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

Section 24.8: **Counterparts.** This Agreement may be executed simultaneously, including via facsimile, in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

*(signatures of the parties to appear on the following page)*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

LESSOR:

CITY OF ROCK FALLS, an  
Illinois municipal corporation

By: \_\_\_\_\_

LESSEE:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit A

**Term of Agreement:** \_\_\_\_\_ 36 months \_\_\_\_\_

**Rent:** \_\_\_\_\_ \$80 per strand, per mile. Total MRC = \_\_\_\_\_ \$400.80 \_\_\_\_\_

**Access Point Locations:**


**Description of Fiber Optic Cable Route Segment(s):**

NUMBER OF LEASED FIBERS	RING OR END DEMARCATION POINTS OF FIBER OPTIC CABLE ROUTE SEGMENTS
1	A) Handhole near 41°47'26.93"N, 89°40'52.24"W, Sterling, IL to 1109 Industrial Park Rd (Data Center) Rock Falls, IL
1	B) Handhole near 41°45'29.94"N, 89°38'33.64"W, E Rock Falls Rd to 1109 Industrial Park Rd (Data Center) Rock Falls, IL

*Additional Provisions:*

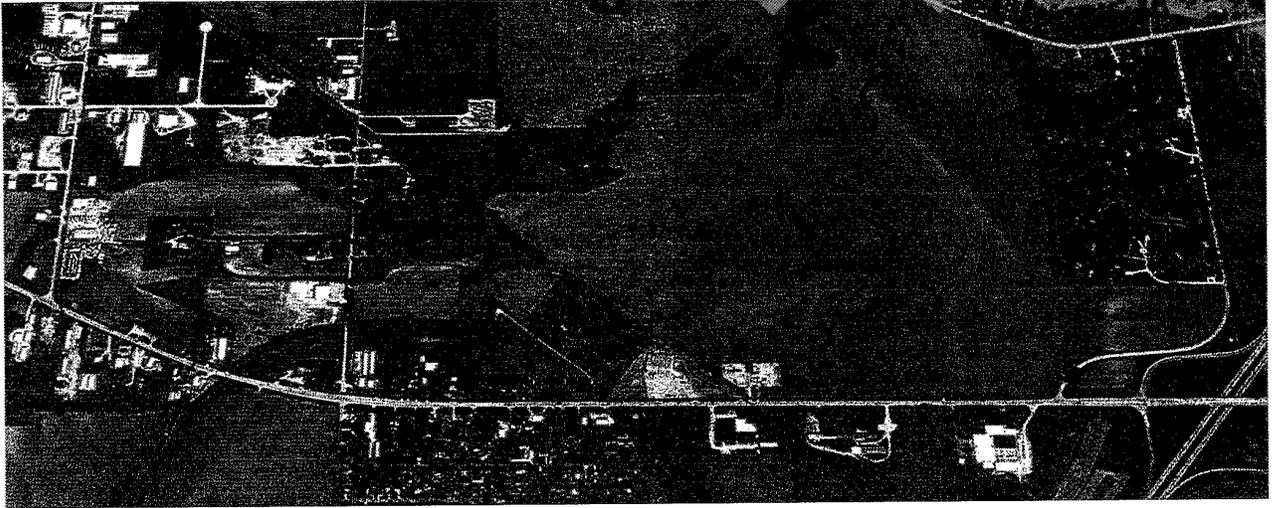
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**Estimated Miles / Footage:**

- A) \_ 2.76 \_ Miles/ \_ 14,573 \_ Feet
- B) \_ 2.25 \_ Miles/ \_ 13,095 \_ Feet



c)



D)

Exhibit B

**TESTING AND ACCEPTANCE PROCEDURES/STANDARDS**

1. All splices will be performed with an industry-accepted fusion splicing machine.
2. All OTDR and splicing testing and acceptance procedures shall be in accordance with generally accepted industry standards.
3. Lessor reserves the right to such additional testing and acceptance procedures as may be necessary in its reasonable discretion.

Exhibit C

**ACCEPTANCE/REJECTION NOTICE**

Check one box:

Leased Fiber Accepted (fill in acceptance statement below)

Pursuant to that certain Dark Fiber Lease Agreement (the "Agreement") by and between the City of Rock Falls ("Lessor") and \_\_\_\_\_ ("Lessee"), dated \_\_\_\_\_, Lessee hereby accepts the Leased Fiber as described in Exhibit A to the Agreement.

Leased Fiber Rejected (fill in reason statement below)

Reason for Rejection:

Fibers are currently in service and accepted "as is".

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit D

(Collocation Agreement TBD – if necessary)

Exhibit E

**LESSOR MAINTENANCE AND CALL OUT LIST**

Upon Lessor's receipt of a report from Lessee, Lessor shall use its best efforts to dispatch qualified personnel to the location of the outage within four (4) hours. In the event of outage or other issues with respect to the Leased Fiber, Lessee shall contact:

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## Exhibit F

### **ROUTINE MAINTENANCE STANDARDS**

#### 1.1 FIBER OPTIC CABLE ROUTE SURVEILLANCE

Outside Fiber Optic Cables are periodically inspected by Lessor personnel. During such inspection, the Fiber Optic Cable route is driven/walked to inspect for discrepancies that may affect Fiber Optic Cable integrity. Any discrepancies found are documented and forwarded to Lessor for correction, repair or replacement as necessary. The following are some of the items that may be inspected:

- Fiber Optic Cable route integrity (e.g.: erosion)
- Condition of poles, pedestals, risers, lashing wire, route markers and signs
- Construction activity in the area near the Fiber Optic Cable

#### 1.2 LOCATION REQUESTS

Lessor will follow the guidelines and laws applicable to the State of Illinois relating to excavation and digging, including the marking of their facilities within forty eight (48) hours of receipt of request. Lessor will also take action to ensure that the excavator is aware and protect the Fiber Optic Cable during the excavation as required.

#### 1.3 FIBER OPTIC CABLE RELOCATION REQUESTS

Fiber Optic Cable relocation requests will be submitted to the Lessor to be reviewed for applicable resolution. Requests should be responded to within ten (10) business days and scheduled as required, taking into consideration the scope of work and the urgency of the activity.

**CITY OF ROCK FALLS – FIBERNET  
DARK FIBER LEASE AGREEMENT**

This Dark Fiber Lease Agreement (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Rock Falls, an Illinois municipal corporation (“Lessor”) and \_\_\_\_\_ (“Lessee”).

WHEREAS, Lessor is the owner of a fiber optic communication system located in the City of Rock Falls, Illinois, which is capable of providing access to high speed internet connection and other uses in relation thereto; and

WHEREAS, Lessor is in the business of, among other things, leasing certain Dark Fibers in the Lessor Network to third parties for purposes of providing high speed internet to such third parties and their customers/consumers; and

WHEREAS, Lessee desires to lease certain Dark Fibers in the Lessor Network and Lessor desires to lease to Lessee the right to use certain Dark Fibers in the Lessor Network subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Lessor and Lessee hereby agree as follows:

Section 1:     **Definitions.** In addition to any terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- A.     “Acceptance” means Lessee’s issuance of an Acceptance Notice or failure to issue a notice of defective Leased Fiber within thirty (30) days after receipt of Optical Time-Domain Reflectometry (“OTDR”) test results from Lessor pursuant to Article III.
- B.     “Acceptance Notice” means Lessee’s notice of acceptance or deemed acceptance of the Leased Fiber pursuant to Article III.
- C.     “Access Point” is the physical location(s) at which Lessee may, subject to required permits and Rights, connect its telecommunications system with the Leased Fiber. Access Points may be a Lessor point of presence, regenerator site, optical amplifier site, or other designated Splice Point, with each Access Point specifically set forth in Exhibit A. Within thirty (30) days after Acceptance, Exhibit A shall be updated to reflect the actual location of the Access Points.
- D.     “Associated Property” shall have the meaning set forth in Section 1.1.
- E.     “Collocation Agreement” shall have the meaning set forth in Section 4.1.
- F.     “Dark Fiber” means Fiber between two specified locations that has no optronics or electronics attached to it.

- G. "Delivery Work" shall mean all work necessary in order to achieve connectivity and to provide OTDR test results to Lessee from Access Point to Access Point pursuant to Article III herein.
- H. "Fiber" means a glass strand or strands which is/are protected by a color coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- I. "Fiber Optic Cable" means a collection of Fibers contained in color-coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler.
- J. "Leased Fiber" means the Dark Fibers/Fiber Optic Cable obtained by Lessee in the Lessor Network as set forth in Exhibit A.
- K. "Lessor Network" means the fiber optic communication system and all Associated Property owned or operated by Lessor.
- L. "Proportionate Share" means the percentage determined by dividing the total number of Leased Fiber by the total number of Fibers in the Lessor Network.
- M. "Rejection Notice" means the notice of rejection of one or more of the Leased Fiber given to Lessor by Lessee pursuant to Article III herein.
- N. "Relocating Authority" shall have the meaning set forth in Section 24.3.
- O. "Rent" means the amount of money Lessee shall pay Lessor for the use of the Leased Fiber.
- P. "Rights" means any and all permits, rights, and right-of-way agreements, easements, licenses, leases, rights or other agreements necessary for the occupancy and use by either party of poles, conduit, cable, wire, physical plant facilities, and/or access to real property underlying the Fiber Optic Cable.
- Q. "Tax" or "Taxes" means all taxes, fees, levies, impositions, imposed duties, charges, or withholdings of any nature, including without limitation ad valorem, real property, gross receipts, taxes and franchise, license and permit fees, together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Leased Fiber, Lessor Network, or any part thereof, by any governmental agency or taxing authority.

## **ARTICLE I LEASE OF DARK FIBER**

**Section 1.1: Lease of Dark Fiber.** Subject to the terms and conditions of this Agreement, Lessor hereby leases to Lessee certain Dark Fibers in the Lessor Network more specifically described on Exhibit A, attached hereto. The lease includes a non-exclusive right to use tangible and intangible Lessor property in order to use the Leased Fiber, including but not limited to cable sheathing, troughing, pedestals, slack containers, and other related equipment necessary for the operation and use of the Leased Fiber as contemplated herein (collectively, the "Associated Property"), but excluding

any electronic or optronic equipment, which shall be provided by Lessee at its sole cost. Lessee agrees to be bound by all applicable laws, regulations and Rights agreements.

**Section 1.2: Non-Interference.** Lessee (or any sub-Lessee) shall not use the Leased Fiber in a manner that materially interferes in any way with, or otherwise adversely affects the use of the Lessor Network, Fibers, Fiber Optic Cable, (or any equipment or element thereof). Lessor shall take reasonable measures not to use any other Fibers in the Lessor Network in a way that materially interferes with or would adversely affect Lessee's use of the Leased Fiber.

**Section 1.3: Lessor Property.** The Parties agree that title to the Leased Fiber, Lessor's Fiber Optic Cable, and the Lessor Network (collectively, the "Lessor Property") is vested solely in Lessor. Lessee shall not individually, or permit others to, access, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Lessor Property without the prior, written consent of Lessor. The Parties agree that no party other than Lessor, or a contractor under the direct supervision of Lessor, shall be permitted to perform maintenance or splicing. Lessor Property is for use in connection with this Agreement and shall not be used for any purpose other than that for which Lessor provided it. In the event that Lessee, or Lessee's representative, agent or any other party associated with Lessee violates this provision, in addition to actual damages sustained by Lessor, exclusive of indirect, incidental, consequential, special, or punitive damages for breach by Lessee, Lessee shall be responsible to pay Lessor for all reasonable damages to Lessor Property and also any ongoing service charges in the event that maintenance or inspection of Lessor Property is required as a result of Lessee's violation of this provision. In no event shall Lessor be liable to Lessee or any other entity for interruption of service or for any other loss, cost or damage caused or related to Lessee's unauthorized tampering with the Lessor Property. In the event of any violation of this provision, Lessor reserves the right to terminate this Agreement, and Lessee shall forfeit all monies paid by Lessee hereunder to date.

## **ARTICLE II TERM**

**Section 2.1: Term of Agreement.** The initial term of this Agreement shall commence on the Effective Date (as defined in Section 3.3) and shall continue thereafter for the period of time set forth in Exhibit A unless sooner terminated as provided below (all of the foregoing, the "Initial Term").

**Section 2.2: Renewal Terms.** Either party may terminate this Agreement at the end of the Initial Term by giving written notice of such termination to the other party at least ninety (90) days prior to the end of such term. If neither party gives such notice of termination, this Agreement shall automatically continue in force from year to year until terminated by either party upon ninety (90) days written notice (each a "Renewal Term"). The Initial Term and any applicable Renewal Term(s) are collectively referred to herein as the "Term".

**Section 2.3: Survival of Certain Obligations.** The expiration or termination of this Agreement shall not affect the rights or obligations of any party with respect to any payments of costs incurred prior to the date of termination or pursuant to Article IX (Taxes); Article X (Liability); Article XVI (Default); and Article XXIII (Rights).

**Section 2.4: Termination/Expiration; Restoration.** Within sixty (60) days from the expiration or earlier termination of this Agreement, Lessee shall remove, or cause to be removed, all Lessee owned Fiber Optic Cable and related equipment used in connection with Lessee's use of the Leased Fiber (all of the foregoing, collectively, the "Lessee Property"), and shall return the Access

Point, Lessor Fiber Optic Cable, and Associated Property used in connection with the Leased Fiber to substantially the same condition as it was in as of the Effective Date. Lessee shall provide Lessor with reasonable notice of its intended removal process, including the dates and times during which Lessee will remove or anticipates removing Lessee Property, in order for Lessor to supervise the same for compliance with the terms of this Agreement.

### **ARTICLE III ACCEPTANCE AND DOCUMENTATION**

**Section 3.1: Acceptance.** Lessee shall be deemed to have accepted and to be in possession of the Leased Fiber upon the Effective Date subject to, and after completion of, the procedures set forth below.

**Section 3.2: Test Results.** Lessor shall complete the Delivery Work and provide Access Point to Access Point OTDR test results for the Leased Fiber. In addition, Lessee may perform a visual inspection, subject to any relevant Rights agreements, of all above-ground Access Points and visible Lessor Fiber Optic Cable construction. Within thirty (30) days after receiving the Leased Fiber test results, Lessee shall (i) determine whether the Leased Fiber test results conform to the requirements of the Testing and Acceptance Standards attached hereto as Exhibit B, and (ii) provide an Acceptance/Rejection Notice in the form of the attached Exhibit C. Issuance of an Acceptance Notice or failure to issue an Acceptance/Rejection Notice within the thirty (30) day period shall constitute Lessee's unconditional and irrevocable Acceptance of the Leased Fiber for all purposes under this Agreement.

**Section 3.3: Acceptance/Rejection Procedure.** If Lessee rejects the Leased Fiber by providing a Rejection Notice within the applicable thirty (30) day period in accordance with Section 3.2, upon receipt thereof, Lessor shall promptly undertake to investigate, and if necessary correct, any deficiency or non-conformity in the Leased Fiber. Thereafter, Lessor shall again conduct testing of the Leased Fiber from Access Point to Access Point. The foregoing procedure, as described in Section 3.2, shall apply again and successively thereafter until Lessor has remedied all material defects or significant failures and Lessor has received written notice from Lessee that the Leased Fiber meets the requirements of this Agreement. However, Lessee shall deliver to Lessor any subsequent Rejection Notices after the initial thirty (30) day period within thirty (30) business days after receipt of the relevant test results from Lessor, or Lessee shall be deemed to have accepted the Leased Fiber.

If Lessee issues a Rejection Notice where Lessor reasonably believes the Leased Fiber test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing, sharing the cost equally, to determine whether the test results conform to specifications. Lessee shall not unreasonably withhold its acceptance of the Leased Fiber. The date of acceptance of the Leased Fiber shall constitute the "Effective Date."

**Section 3.4: Record Drawings.** Upon request, but not before one hundred twenty (120) days after Acceptance, Lessor shall provide record drawings regarding the as-built Fiber Optic Cable containing the Leased Fiber. The record drawings shall contain the technical specifications of the Leased Fiber, associated splices and other details consistent with industry standards. At the request of Lessee, and at Lessee's cost, the record drawings may also be provided in electronic format if possible using reasonable efforts.

**ARTICLE IV  
PERMITS, RIGHTS FEES, AND COLLOCATION AGREEMENTS**

**Section 4.1: Collocation.** Lessee shall be responsible for entering into any collocation agreements with local exchange carriers and interexchange carriers to use its Leased Fiber. In the event that Lessee wishes to co-locate in Lessor facilities, or in facilities owned by any third party as a sub-tenant Lessee of Lessor, the parties shall enter into a separate collocation agreement for each site substantially in the form of a Collocation Services Addendum (a "Collocation Agreement", which may be attached as Exhibit D subject to obtaining any required third party consents, including the consent of any landlords of Lessor. In the event that Lessor, in its discretion, decommissions any collocation site, Lessor will not be responsible for any costs associated with removal or relocation of Lessee's facilities or the Leased Fiber.

**Section 4.2: Permits.** Lessee shall be responsible for the appropriate government filings, licenses, or other requirements to place the Leased Fiber into operation, including, but not limited to any necessary municipal licenses and/or franchise agreements other than those Rights agreements discussed in Article XXIII herein and which shall remain the responsibility of Lessor.

**Section 4.3: Rights Fees.** Consistent with Article IX herein, Lessee shall pay its Proportionate Share of Rights fees as required from time to time by property owners, government agencies, taxing authorities, or otherwise imposed by law or contract and which relate to Lessor's Fiber Optic Cable containing the Leased Fiber. Upon written request therefor, Lessor shall provide a reasonable accounting for same.

**ARTICLE V  
PAYMENT**

**Section 5.1: Rent.** Upon Acceptance of the Leased Fiber pursuant to the procedures set forth in Article III herein, Lessee shall pay to Lessor the Rent, all upon such terms as set forth in Exhibit A.

**Section 5.2: Method of Payment.** All payments to Lessor set forth in this Agreement, except as otherwise provided herein, are due and payable within thirty (30) days of Lessee's receipt of an invoice for the same.

**Section 5.3: Overdue Payments.** If Lessee fails to make any payment under this Agreement when due, such amount shall accrue interest from the date such payment is due until paid, including accrued interest compounded monthly, at an annual rate of six percent (6%). If the aforementioned rate exceeds the maximum rate allowed by applicable law, then the interest rate made applicable herein shall be the maximum rate allowed by law.

**ARTICLE VI  
MAINTENANCE AND REPAIRS**

**Section 6.1: Procedures.** The escalation and call-out list for maintenance and repair communications is set forth on Exhibit E. Lessor warrants that the Leased Fiber will be maintained in accordance with prevailing telecommunications industry standards, and with the Routine Maintenance Standards set forth in the attached Exhibit F.

**Section 6.2: Routine and Emergency Maintenance.** All routine maintenance and repair functions and emergency maintenance and repair functions, including “one-call” responses, cable locate services, and necessary relocation of the Lessor Fiber Optic Cable containing the Leased Fiber, shall be performed by Lessor or its designee.

(a) **Emergency Maintenance.** Lessor shall respond to any failure, interruption or impairment in the operation of the Leased Fiber within four (4) hours after receiving a report of any such failure, interruption or impairment. Lessor shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the Leased Fiber within eight (8) hours.

(b) **Routine Maintenance.** Lessor shall schedule and perform periodic maintenance and repair checks and services as set forth in the Routine Maintenance Standards (Exhibit F). Additional maintenance may be performed from time to time on the Leased Fiber at Lessor reasonable discretion, or upon Lessee’s request with reasonable advance notice to Lessor.

**Section 6.3: Notice of Repair.** Except when implementation of an emergency repair situation would be delayed by the following notice requirements, Lessor shall provide advance notice to Lessee of maintenance or repairs that may affect the Leased Fiber.

(a) **Emergency Maintenance.** Lessor shall provide at least two (2) hours advance notice regarding repairs that may affect Lessee’s Leased Fiber. Notice shall be given in the method specified for Routine Maintenance in subsection (b) below.

(b) **Routine Maintenance.** Lessor shall use its best efforts provide at least ten (10) calendar days advance notice regarding any maintenance or repairs that may affect Lessee’s Leased Fiber by submitting an email notification to Lessee.

**Section 6.5: Maintenance of Relocated Fibers.** In the event that Lessee acquires a leasehold interest in relocated fibers pursuant to this Agreement, Lessor shall continue to provide maintenance and repair services in the replacement fibers according to the terms herein.

## **ARTICLE VII SPLICING**

**Section 7.1: Splicing by Lessor Only.** Upon Acceptance of the Leased Fiber, Lessee’s lateral or other Fibers beyond the Access Points may be spliced into the Lessor Fiber Optic Cable at the Access Points pursuant to the procedures set forth on Exhibit B. In order to maintain the integrity of Lessor’s Fiber Optic Cable and Lessor’s Network, Lessor, or a contractor operating under its direction, shall perform all splicing performed on the Lessor Fiber Optic Cable at the Access Points, at Lessee’s expense.

## **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

**Section 8.1: Representations and Warranties.** Each party represents and warrants to the other with respect to the rights and obligations contained herein:

- (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) this Agreement constitutes a legal, valid, binding obligation enforceable against such party in accordance with its terms; and
- (c) the execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

**Section 8.2: Limitation on Liability and Disclaimer of Warranties.** LESSOR WARRANTS THAT LESSOR'S FIBER OPTIC CABLE AND FIBERS SHALL HAVE BEEN CONSTRUCTED IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS AND SHALL BE FREE OF MATERIAL DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF THIRTY (30) DAYS FROM ACCEPTANCE THEREOF BY LESSEE. LESSOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO LESSOR'S FIBER OPTIC CABLE OR THE LEASED FIBER. THE FOREGOING WARRANTY CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO LESSOR'S FIBER OPTIC CABLE AND THE LEASED FIBER. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LESSOR SHALL IN NO EVENT BE LIABLE TO LESSEE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER FOR ANY REASON HEREUNDER.

**Section 8.3: Vendor Warranties.** In addition to the foregoing limited warranties, Lessor hereby assigns to Lessee, and Lessee shall have the benefit of, any and all vendors', manufacturers', contractors' and suppliers' warranties with respect to the material in the Fiber Optic Cable, Fiber, and/or associated property supplied by Lessor.

## ARTICLE IX TAXES

**Section 9.1: Lessee Responsibility.** Upon Lessee's Acceptance of the Leased Fiber, Lessee shall be responsible for any and all sales, use, income, gross receipts, real or personal property or other Tax imposed on Lessor due to Lessee's use of the Leased Fiber.

**Section 9.2: Lessor Responsibility.** Lessor shall be responsible for and shall timely pay any and all Taxes and impositions with respect to the construction or operation of Lessor's Network, which Taxes or impositions are imposed or assessed during the Term with respect to any of Lessor's Fiber Optic Cable subject to this Agreement. Notwithstanding the foregoing obligations, Lessor shall have the right to challenge any such Tax or imposition so long as the challenge of such Tax or imposition does not materially adversely affect the rights to be delivered to Lessee pursuant hereto.

**Section 9.3: Tax Cooperation.** Lessor and Lessee acknowledge and agree that it is their mutual objective and intent to (i) minimize, to the extent feasible, the administrative expenses associated with and the aggregate Taxes and impositions payable with respect to this Agreement and the Leased Fiber and (ii) share such Taxes according to their respective interests in the Leased Fiber

and Lessor's Fiber Optic Cable, and that they will cooperate with each other and coordinate their mutual efforts to achieve such objectives in accordance with the provisions of this Article.

**Section 9.4: Payment Exclusive of Taxes.** All payments made by Lessee to Lessor hereunder shall be made without any deduction or withholding for or on account of any Tax, duty or other charges of whatever nature imposed by any taxing or government authority.

## **ARTICLE X LIABILITY**

**Section 10.1: Limitation of Liability.** Neither Lessor nor Lessee shall be liable to the other for any indirect, special, punitive or consequential damages, including, but not limited to, any claim from any customer for loss of services, arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either party hereto, its directors, officers, employees, servants, elected officials, contractors and/or agents. Both Lessor and Lessee shall include in any agreement with any third party relating to the use of Lessor's Fiber Optic Cable or Lessee's Leased Fiber a waiver by such third party of any claim for indirect, special, punitive or consequential damages, including, but not limited to, any claim from any client or customer for loss of services, arising out of or as a result of any act or omission by either party hereto, its directors, officers, employees, servants, contractors and/or agents.

**Section 10.2: Lessor Indemnification.** Subject to the provisions of Section 10.1, Lessor hereby agrees to indemnify, defend, protect and hold harmless Lessee and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any person, tangible property or facilities of any person, including reasonable attorneys' fees and costs, to the extent arising out of or resulting from the negligence or willful misconduct of Lessor, its officers, employees, servants, affiliates, and agents arising out of or in connection with the performance or omission by Lessor of its obligations or the exercise by Lessor of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Lessor of any regulation, rule, statute or court order of any governmental authority in connection with the performance or omission by Lessor of its obligations or the exercise by Lessor of its rights under this Agreement.

**Section 10.3: Lessee Indemnification.** Subject to the provisions of Section 10.1, Lessee hereby agrees to indemnify, defend, protect and hold harmless Lessor, and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any person, tangible property or facilities of any person, including reasonable attorneys' fees and costs, to the extent arising out of or resulting from the negligence or willful misconduct of Lessee, its officers, employees, servants, affiliates, and agents arising out of or in connection with the performance or omission by Lessee of its obligations or the exercise by Lessee of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Lessee of any regulation, rule, statute or court order of any governmental authority in connection with the performance or omission by Lessee of its obligations or the exercise by Lessee of its rights under this Agreement.

**Section 10.4: Notice of Claims.** Lessor and Lessee agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

**Section 10.5: Actions Against Third Parties.** Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the operation or use of Lessor's Fiber Optic Cable, or any of the Leased Fiber; and each party hereto shall assign such rights or claims, execute such documents and take whatever actions as may be reasonable and necessary to enable the injured party to pursue any such action against such third party.

**Section 10.6: Survival of Indemnifications.** Lessor and Lessee each expressly recognize and agree that its obligation to indemnify, defend, protect and hold the other harmless is not a material obligation to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to so indemnify, defend, protect and save the other harmless, the injured party hereby expressly recognizes that its sole remedy in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration or termination of this Agreement for a period of one (1) year.

## **ARTICLE XI FORCE MAJEURE**

**Section 11.1: Force Majeure.** The obligations of the parties (except for the payment of money hereunder by Lessee) are subject to force majeure and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto. The excused party shall use its best efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification of any such event or cause shall in all cases be given by the excused party to the other and, when possible, of the estimated duration.

## **ARTICLE XII RELOCATION OF CABLE**

**Section 12.1: Relocation.** If after the Effective Date, Lessor is required to, or reasonably determines that it is required to, relocate or replace its Fiber Optic Cable or any of the appurtenant facilities used or required in providing the Leased Fiber, (whether by act of nature, government, or Lessor of any Right) then, so long as such work is not necessitated by a breach of Lessor's obligations hereunder, Lessee shall reimburse Lessor for Lessee's Proportionate Share of such costs, including, without limitation, Fiber Optic Cable acquisition, splicing, and testing, including overhead. Lessor, upon written request, shall deliver to Lessee updated record drawings with respect to any relocated portion of the Fiber Optic Cable upon request but no earlier than one hundred twenty (120) days following such relocation. Upon completion of any such relocation and payment therefor by Lessee, Lessee shall be deemed have a leasehold interest in and to the replacement Fibers as set forth in Article I herein.

**Section 12.2: Notice of Relocation.** Lessor shall give Lessee thirty (30) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to use for such relocation.

**Section 12.3: Right to Review.** Lessor shall have the right to determine the timing, means, method and extent of any relocation hereunder; provided however, that Lessee shall have the right to review the relocation plans of Lessor fourteen (14) days prior to any relocation and shall have the right to have a representative present at the time Lessor relocates the Fiber Optic Cable containing the Leased Fiber.

## **ARTICLE XIII INSURANCE**

**Section 13.1: Insurance Requirements.** Each Party, and any contractor employed by the Party to work on the Fiber Optic Cable and/or Fibers, shall maintain insurance for the duration of this Agreement, and for three (3) years after the termination of this Agreement (in the case of Lessee) or for three (3) years after the termination of a contractor's work on the Leased Fiber and/or Lessor's Fiber Optic Cable (in the case of a contractor), as follows:

(a) Workers' Compensation Insurance in such amounts as may be required by the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$1,000,000 for each accident, including occupational disease coverage with limits of \$1,000,000 for each employee, with a \$1,000,000 policy limit.

(b) Comprehensive General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$1,000,000 each person and \$1,000,000 each accident, and Property Damage - \$1,000,000 each accident.

(c) Automobile Liability Insurance for owned, hired and non-owned autos: \$1,000,000 combined single limit bodily injury/property damage.

(d) Excess or Umbrella Insurance applicable to all of the coverages required in this section, except for the Workers' Compensation Insurance required in subparagraph (a) above (but such coverage shall be applicable to the required Employers Liability Insurance), with policy limits of at least \$2,000,000 per occurrence.

**Section 13.2: Lessor as Additional Insured.** Lessor shall be included as an additional insured on a primary, non-contributory basis on all policies specified in Section 13.1. Such additional insurance shall apply to any and all claims arising out of Lessor's or a contractor's work, operations or products; additional insurance provisions which apply only to claims arising out of the named insured's negligence or which otherwise apply only to vicarious liability are not acceptable.

**Section 13.3: Proof of Insurance.** Failure of either Party to enforce the insurance requirements of this Article XIII shall not relieve the Party of its obligation to maintain the required coverage. Upon request, either Party shall provide proof of insurance to the other. Unless otherwise agreed in writing, all insurance policies required shall be obtained and maintained with companies rated A or better by Best's Key Guide.

## **ARTICLE XIV CONDEMNATION**

**Section 14.1: Notice of Taking.** Upon its receipt of a formal notice of condemnation or taking with respect to Lessor's Fiber Optic Cable or the Rights in or upon which the Lessor's Fiber Optic Cable has been installed, Lessor shall notify Lessee within thirty (30) days of any such condemnation proceeding filed against Lessor's Fiber Optic Cable, including the Leased Fiber, or the Rights in or upon which the Leased Fiber have been installed.

**Section 14.2: Costs.** It is expressly recognized and understood by Lessee that relocation costs resulting from any such condemnation proceeding may not be fully reimbursed by the condemning authority and, if Lessor relocates the Leased Fiber, Lessee shall pay its Proportionate Share of all costs associated with the relocation of the Leased Fiber in excess of such costs which were reimbursed by the condemning authority. Notwithstanding, if the Leased Fiber are relocated by Lessor, Lessee shall pay to Lessor all condemnation awards given to Lessee, if any, that relate to the relocation of the Leased Fiber and thereafter Lessee shall be deemed to have a leasehold interest in and to the replacement Fibers as set forth in Article I herein.

## **ARTICLE XV CONFIDENTIALITY**

**Section 15.1: Confidential Information.** Lessor and Lessee shall agree to keep the terms and substance of this Agreement confidential, and shall refrain from using or disclosing any confidential information of the other party that may be shared pursuant to this Agreement for any purpose not specifically authorized herein. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information that (1) is publicly available or in the public domain at the time disclosed to the Receiving Party; (2) is or becomes publicly available or enters the public domain through no fault of the Receiving Party or its representatives; (3) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations with respect thereto; (4) is already in the receiving party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (5) is independently developed by the receiving party; (6) is approved for release or disclosure by the disclosing party without restriction; or (7) is required by law or court order to be disclosed, in which event the receiving party shall immediately notify the disclosing party in writing in order to enable the disclosing party to take appropriate measures to protect the confidentiality of the confidential information. The parties agree and acknowledge that Lessor is a governmental body, and as such, is subject to comply with certain disclosures of information pursuant to the Freedom of Information Act (FOIA) and such other statutory requirements such as the Open Meetings Act (OMA). It is hereby expressly agreed that Lessor shall not be liable to Lessee, and it shall not be considered a breach of this Agreement, in the event Lessor is required to disclose certain information that may consist of Confidential Information pursuant to the OMA or any lawful FOIA request. The foregoing exceptions relating to FOIA and OMA shall similarly apply to Lessee to the extent said Lessee is a governmental body subject to such laws.

## **ARTICLE XVI DEFAULT**

**Section 16.1: Notice and Cure.** Neither party shall be in default under this Agreement unless and until the other party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within ten (10) days after written receipt of such

notice; provided, however, that where a default cannot be reasonably cured within the ten (10) day period, if the defaulting party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to sixty (60) days from the date of receipt of the default notice.

**Section 16.2: Failure to Cure.** Upon the failure by the defaulting party to timely cure any default after notice thereof from the non-defaulting party, the non-defaulting party may take any action it determines necessary to pursue any legal remedies it may have under applicable law or principles of equity relating to the breach, subject to the limitations of liability set forth herein. Lessor specifically reserves the right to terminate the rights granted under this Agreement in the event of an uncured default by Lessee.

**Section 16.3: Additional Events of Default by Lessee.** An event of default shall also be deemed to have occurred if Lessee becomes insolvent, or institutes or has instituted against it bankruptcy proceedings which are not dismissed within ninety (90) days of filing, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, and Lessor may immediately terminate this Agreement.

**Section 16.4: Equitable Relief.** The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement are not performed in accordance with their terms or are otherwise breached. It is agreed that each party shall be entitled to injunctive or similar preliminary relief to prevent or cure breaches of the provisions of this Agreement by the other and to enforce specifically the terms and provisions of this Agreement by the other, in addition to any other remedy to which they may otherwise be entitled to in law or equity.

## ARTICLE XVII NOTICES

**Section 17.1: Notices.** Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by either Party to the other shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgement of delivery and shall be deemed delivered (i) if sent by U.S. Mail, five (5) days after deposit; or (ii) if sent by commercial overnight delivery service, upon verification of receipt. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to Lessor:                   City of Rock Falls  
  Attn: Fiber Department Supervisor  
  1109 Industrial Park Road  
  Rock Falls, IL 61071

With a copy to:                City of Rock Falls  
  Attn: City Clerk  
  603 W. 10<sup>th</sup> Street  
  Rock Falls, IL 61081

If to Lessee:                   \_\_\_\_\_

  \_\_\_\_\_

With a copy to:

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**ARTICLE XVIII  
ASSIGNMENT, SUCCESSION**

Section 18.1: Assignment. Lessee shall not assign this Agreement, in whole or in part, to any other party without prior written notice to and written consent of Lessor, in Lessor's sole and absolute discretion.

Section 18.2: Binding Effect. Subject to the provisions of this Article, each of the parties' respective rights and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

**ARTICLE XIX  
GOVERNING LAW**

Section 19.1: Prior Laws and Agreements. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles. Venue shall be appropriate in a court of competent jurisdiction residing in Whiteside County, Illinois.

**ARTICLE XX  
ACKNOWLEDGEMENT REGARDING USE AND ENCUMBRANCES**

Section 20.1: No Encumbrances. Lessee agrees and acknowledges that it has no right to use any of the Fibers, other than the Leased Fiber, included in the Lessor Fiber Optic Cable or otherwise incorporated into Lessor's Network and that Lessee shall keep any and all of Lessor's Network, other than the Leased Fiber, free from any liens, rights or claims of any third parties whatsoever.

**ARTICLE XXI  
NO PARTNERSHIP/JOINT VENTURE**

Section 21.1: No Partnership. The parties agree that this Agreement does not create a partnership between, or a joint venture of the Lessor and Lessee.

**ARTICLE XXII  
OPERATIONS**

Section 22.1: Responsibility for Operations. Subject to the provisions of this Agreement, each party shall have responsibility for determining any network and service configurations or designs, routing configurations, rearrangement or consolidation of channels or circuits and all related function with regard to the use of that party's Fiber.

Section 22.2: Responsibility for Optronics. Lessee acknowledges and agrees that Lessor is not supplying nor is Lessor obligated to supply to Lessee any optronics or electronics or optical or electrical equipment at any Lessee site, all of which are the sole responsibility of Lessee; nor is Lessor responsible for performing any work other than as specified in this Agreement or for providing other facilities, including, without limitation, generators, batteries, air conditioners, fire protection, and monitoring and testing equipment at any Lessee site, unless specifically otherwise agreed in writing.

## **ARTICLE XXIII RIGHTS**

Section 23.1: Required Rights. Lessor agrees to obtain and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary for Lessor to obtain in order to permit Lessor to construct, install and keep installed, and maintain the Leased Fiber in accordance with this Agreement and to convey the leasehold interest in the Leased Fiber to Lessee and all other rights under this Agreement (collectively, the “**Required Rights**”). To the extent necessary, Lessee shall obtain, prior to the commencement of the Term, and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations, franchises and other approvals which are necessary for Lessee to obtain in order to permit Lessor to grant the leasehold interest to Lessee and for Lessee to use the Leased Fiber.

Section 23.2: Notice; Cure. In the event Lessor shall receive notice from any Lessor or provider of a Required Right that Lessor has failed to observe or perform its obligations under such Required Right, Lessor shall give written notice to Lessee and Lessee may, at its option and after providing Lessor with a reasonable opportunity to cure the same, subject to the terms and provisions of the Required Right and the ability of third parties to cure defaults of Lessor thereunder, cure or correct such failure.

Section 23.3: Relocation. If Lessor is required (i) by any governmental authority under the power of eminent domain or otherwise; (ii) by the Lessor or provider of any Required Right; (iii) by any other person having the authority to so require (each a “**Relocating Authority**”); or (iv) by the occurrence of any force majeure event, to relocate the Fiber Optic Cable, Fibers, or associated equipment, Lessor shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. Lessee shall be kept fully informed of all determinations made by Lessor in connection with such relocation, and any such relocation shall be constructed substantially in accordance with the specifications set forth herein, shall incorporate Fiber meeting or exceeding the specifications set forth herein, and be subject to Acceptance testing.

Section 23.4: Right to Contest. Lessor shall have the right to contest any legal or equitable challenge relating to the Rights. If Lessee agrees in writing to join Lessor in any such contest the out-of-pocket costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by Lessor in any such contest shall be shared by Lessee and Lessor by their Proportionate Shares.

## ARTICLE XXIV MISCELLANEOUS

Section 24.1: **Headings.** The headings of the Articles and Sections in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Agreement.

Section 24.2: **Construction.** In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

Section 24.3: **Severability.** No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any Article or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that Article or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such Article or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement section or clause that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

Section 24.4: **Entire Agreement; Amendment.** This Agreement, and any Exhibits referenced and attached hereto or to be attached hereto, including any other agreement or exhibit incorporated by reference, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written. This Agreement may be amended only by a written instrument executed by the party against whom enforcement of the modification is sought.

Section 24.5: **Non-Waiver.** No failure to exercise and no delay in exercising, on the part of either party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.

Section 24.6: **Performance.** All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner.

Section 24.7: **Well Known Meanings.** Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

Section 24.8: **Counterparts.** This Agreement may be executed simultaneously, including via facsimile, in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

*(signatures of the parties to appear on the following page)*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

LESSOR:

CITY OF ROCK FALLS, an  
Illinois municipal corporation

By: \_\_\_\_\_

LESSEE:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit A

Term of Agreement: \_\_\_\_\_ See Additional Provisions below \_\_\_\_\_

Rent: \_\_\_\_\_ \$0 per strand, per mile. Total MRC = \$0 \_\_\_\_\_

**Access Point Locations:**


**Description of Fiber Optic Cable Route Segment(s):**

NUMBER OF LEASED FIBERS	RING OR END DEMARCATION POINTS OF FIBER OPTIC CABLE ROUTE SEGMENTS
1	A) Handhole near 41°47'26.93"N, 89°40'52.24"W, Sterling, IL to 2107 9 <sup>th</sup> Av (Telecom Shelter) Rock Falls, IL (uplink 2)
1	B) 300 Av A (Telecom Shelter) to 1109 Industrial Park Rd (Data Center) for alternate routing & uplink management.
1	C) Handhole near 41°45'29.94"N, 89°38'33.64"W, E Rock Falls Rd to 1109 Industrial Park Rd (Data Center) Rock Falls, IL (uplink 1)

*Additional Provisions:*

These fibers are used to extend and manage Syndeo's Internet uplinks as originally provided to the City of Rock Falls. Terms run concurrent with those contracts. Without renewal, A) and B) expire 9/5/2023. C) expires 4/30/2021

**Estimated Miles / Footage:**

- A)   4.0   Miles/        Feet
- B)   1.5   Miles/        Feet
- C)   2.7   Miles/        Feet



D)

Exhibit B

**TESTING AND ACCEPTANCE PROCEDURES/STANDARDS**

1. All splices will be performed with an industry-accepted fusion splicing machine.
2. All OTDR and splicing testing and acceptance procedures shall be in accordance with generally accepted industry standards.
3. Lessor reserves the right to such additional testing and acceptance procedures as may be necessary in its reasonable discretion.

Exhibit C

**ACCEPTANCE/REJECTION NOTICE**

Check one box:

Leased Fiber Accepted (fill in acceptance statement below)

Pursuant to that certain Dark Fiber Lease Agreement (the "Agreement") by and between the City of Rock Falls ("Lessor") and \_\_\_\_\_ ("Lessee"), dated \_\_\_\_\_, Lessee hereby accepts the Leased Fiber as described in Exhibit A to the Agreement.

Leased Fiber Rejected (fill in reason statement below)

Reason for Rejection:

Fibers are currently in service and accepted "as is".

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit D

(Collocation Agreement TBD – if necessary)

Exhibit E

**LESSOR MAINTENANCE AND CALL OUT LIST**

Upon Lessor's receipt of a report from Lessee, Lessor shall use its best efforts to dispatch qualified personnel to the location of the outage within four (4) hours. In the event of outage or other issues with respect to the Leased Fiber, Lessee shall contact:

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## Exhibit F

### **ROUTINE MAINTENANCE STANDARDS**

#### 1.1 FIBER OPTIC CABLE ROUTE SURVEILLANCE

Outside Fiber Optic Cables are periodically inspected by Lessor personnel. During such inspection, the Fiber Optic Cable route is driven/walked to inspect for discrepancies that may affect Fiber Optic Cable integrity. Any discrepancies found are documented and forwarded to Lessor for correction, repair or replacement as necessary. The following are some of the items that may be inspected:

- Fiber Optic Cable route integrity (e.g.: erosion)
- Condition of poles, pedestals, risers, lashing wire, route markers and signs
- Construction activity in the area near the Fiber Optic Cable

#### 1.2 LOCATION REQUESTS

Lessor will follow the guidelines and laws applicable to the State of Illinois relating to excavation and digging, including the marking of their facilities within forty eight (48) hours of receipt of request. Lessor will also take action to ensure that the excavator is aware and protect the Fiber Optic Cable during the excavation as required.

#### 1.3 FIBER OPTIC CABLE RELOCATION REQUESTS

Fiber Optic Cable relocation requests will be submitted to the Lessor to be reviewed for applicable resolution. Requests should be responded to within ten (10) business days and scheduled as required, taking into consideration the scope of work and the urgency of the activity.

# Gaulrapp Farms

City of Rock Falls

Rock Falls, IL 61071

To whom it may concern,

We would like to continue farming the city sewer plant property on Rt 30. However, since the reduction in acres and the farm economy not being what it has been I'd like to reduce the cash rent from \$300.00 per acre to \$225.00 per acre.

Thank you for your consideration.

Mike Gaulrapp



## CASH FARM LEASE

(Sewer Plant / part of former Zapf Farm)

This lease is entered into on the 21<sup>st</sup> day of April 2020, between the **CITY OF ROCK FALLS** (hereinafter referred to as "Landlord"), Rock Falls, IL 61071, and Mike Gaulrapp, 9179 Tampico Rd, Rock Falls, IL 61071 (hereinafter collectively referred to as "Tenant").

### Description of Land:

Landlord rents and leases to Tenant, to occupy and to use for agricultural purposes only, certain farm real estate located in Whiteside County, Illinois, previously known as part of the Zapf Farm consisting of approximately 24 tillable acres situated in Section 30, Township 21 North, Range 7 East of the 4<sup>th</sup> Principal Meridian, Whiteside County, Illinois (the "Real Estate"). The outline of the real estate intended for use is depicted on the attached drawing. (Exhibit A)

### Term of Lease:

The term of this lease shall be from March 1, 2020 to the last day of February 2021, and Tenant shall surrender possession at the end of this term or at the end of any extension thereof. Extensions must be made in writing and signed by both parties hereto. Both parties agree that failure to execute an extension at least four months before the end of the current term shall be conclusive notice of intent to allow the lease to expire on February 28, 2021. **Statutory notice of termination from Landlord to Tenant is hereby expressly waived for the February 28, 2021 termination date or any subsequent last day of February termination date, if this Lease is extended as provided herein..**

This lease shall be binding upon the heirs, executors, administrators and successors in interest of Tenant.

Amendments, extensions, or any alterations to this lease shall only be valid if in writing signed by Tenant and approved by the City council of Landlord. No persons shall have authority to alter the obligations of Tenant hereunder without the approval of a majority of the elected members of the City Council of Landlord. In the event of failure to agree on proposed alterations, the existing provisions of the lease shall control operations.

### Section 1: Amount of Rent and Time of Payment.

A. Tenant agrees to pay the Landlord annual cash rent for the above-described farm in the amount of three hundred and 00/100 dollars ( \$ 300.00) per tillable acre for 24 tillable acres (\$ 300.00 x 24 = \$ 7,200.00) as follows:

One-half (\$ 3,600) to be paid on or before April 15<sup>th</sup> of each lease year, and one-half (\$ 3,600) to be paid on or before November 1 of each lease year. The rent is based upon the tillable acreage as determined by Farm Services Administration ("FSA") for Whiteside County.

Section 2: Landlord's Investment and Expenses. The Landlord agrees to furnish the property and to pay the items of expenses listed below:

- A. The above-described farm, excluding all improvements.
- B. Real estate taxes on all land and improvements.

Section 3: Tenant's Investment and Expenses. Tenant agrees to furnish the property and to pay the items of expense listed below:

- A. All the machinery, equipment, labor, fuel and power necessary to farm the premises properly.
- B. All seed, inoculation, disease-treatment materials, and fertilizers.
- C. All other items of crop expense not furnished by Landlord as provided in Section 2.

Section 4: Tenant's Duties in Operating Farm. Tenant further agrees that it will perform and carry out the stipulations below:

A. Activities required:

1. To cultivate the farm faithfully and in a timely, thorough, and businesslike manner.
2. To inoculate all alfalfa and soybean seed sown on land not known to be thoroughly inoculated for the crop planted.
3. To prevent noxious weeds from going to seed on said premises and to destroy the same and keep the weeds and grass cut.
4. To keep open ditches, tile drains, tile outlets, grass waterways, and terraces in good repair, and to mow grass waterways on a regular basis.
5. To preserve established watercourses or ditches, and to refrain from any operation that will injure them.
6. To prevent all unnecessary waste, or loss, or damage to the property of Landlord.
7. To comply with rules and regulations of the Illinois Pollution Control Board.
8. To practice fire prevention, follow safety rules, and abide by restrictions in the Landlord's insurance contracts.

B. Activities restricted:

Tenant further agrees, unless it shall first have obtained the written consent of Landlord:

- (a) Not to assign this lease to any person or persons or sublet any part of the premises; in the event of such assignment or sublease, this lease may, at Landlord's discretion, be terminated and may be deemed null and void.

(b) Not to erect or permit to be erected any structure or building or to incur any expense to the Landlord for such purpose.

(c) Not to permit, encourage, or invite other persons to use any part or all of this property for any purpose or activity not directly related to its use for agricultural production.

(d) Not to plow permanent pasture or meadowland.

(e) Not to cut live trees for sale purposes or personal uses.

(f) Not to permit the erection of any commercial advertising signs on the farm.

(g) Not to permit the placement or dumping upon the farm of any waste, trash, refuse, garbage, rubbish, debris, construction debris or hazardous materials or substances. Hazardous material shall mean: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material or substance which is (i) regulated or identified as toxic or hazardous or exposure to which is prohibited, limited, or regulated by an Applicable Law, or either (ii) present in amounts in excess of what is permitted or deemed safe under Applicable Law, or (iii) handled, stored or otherwise used in any way which is prohibited or deemed unsafe under Applicable Law. "Applicable "Law" shall mean any law, rule, order, ordinance, or regulation of any federal, state, county, regional, local or other government authority.

(h) Not to allow any hunting or trapping on the leased land.

C. Additional agreements.

(a) Tenant agrees to maintain present fertility levels and pH levels during the term of said lease and shall return the soil to Landlord in substantially the same condition as exists at the commencement of said lease. Soil fertility and Ph levels will be determined by performance by Tenant of soil tests upon the land in year 2016 and in each 4<sup>th</sup> year thereafter (if Tenant is in possession of all or any part of the land during such subsequent 4<sup>th</sup> year). Copies of the results will be supplied to Landlord, together with copies of certificates of application of all fertilizers and lime applied to the land by Tenant during the term of the lease.

(b) Landlord shall have the right to withdraw a portion the aforesaid Real Estate from this lease by giving Tenant written notice of its election to withdraw such property which notice must be delivered to Tenant prior to November 1 of the following crop year. Landlord shall, at the time of giving such notice, warrant to Tenant that the parcel(s) being withdrawn from the lease is being permanently removed from crop production. In such circumstance, the annual rent shall be re-determined based upon the remaining tillable acreage as determined by FSA as set out above.

Section 5: Default, Yielding Possession, Right of Entry.

A. Termination Upon Default. If either party fails to carry out substantially the terms of this lease in due and proper time, the lease may be terminated by the other party by serving a written notice citing the instance(s) of default and specifying a termination date of ten (10) days from the

date of such notice. Settlement shall then be made in accordance with the provisions of Clause C of this Section.

B. Yielding Possession. Tenant agrees that at the expiration or termination of this lease, it will yield possession of the premises to Landlord without further demand or notice. If Tenant fails to yield possession, he shall pay to Landlord liquidated damages of \$75.00 per day, or if liquidated damages are not specified, the statutory double rent shall apply for each day they remain in possession thereafter, in addition to any actual damages caused by Tenant to Landlord's land or improvements, and said payments shall not entitle said Tenant to any interest of any kind or character in or on the premises.

C. Landlord's Lien for Rent and Performance. The Landlord's lien provided by law on crops grown or growing shall be the security for the rent herein specified and for the faithful performance of the terms of the lease. Tenant shall, if requested in writing by Landlord, provide Landlord with the names of persons or entities to whom Tenant intends to sell crops grown on these demised premises at least thirty (30) days prior to the sale of such crops. A lesser period may be allowed by mutual written agreement. If Tenant shall fail to pay the rent due or shall fail to keep any of the agreements of this lease, all costs and attorney fees of Landlord in enforcing collection or performance shall be added to and become a part of the obligations payable by Tenant hereunder.

D. Landlord's Right of Entry During Term of Lease. Landlord reserves the right of itself, its agents, employees or assigns to enter upon said premises at any reasonable time for the purpose of viewing the same, of working or making repairs or improvements thereon, of developing mineral resources as provided in Clause E below, or, after conclusive notice has been given that the lease may not be extended, or plowing after severance of crops, of seeding, or of applying fertilizers and doing other fieldwork. In the event Tenant is in default on her rent payment, or otherwise in breach of this lease, Landlord may enter said premises for the purpose of harvesting the crops without necessity of proceeding with a suit for distress of rent. Said crop shall be retained by Landlord for payment of the rent due and shall also be applied toward Landlord's cost of harvesting. The balance, if any, shall be delivered to Tenant.

E. Mineral Rights. Nothing in this lease shall confer upon Tenant any right to minerals underlying said land, but the same are hereby reserved by Landlord together with the full right to enter upon the premises and to bore, search, and excavate for same, to work and remove same, and to deposit excavated rubbish, and with full liberty to pass over said premises with vehicles and lay down and work on any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. Landlord agrees to reimburse Tenant for any actual damage she may suffer for crops destroyed by these activities and to release Tenant from obligation to continue farming this property when development of mineral resources interferes materially with Tenant's farming operations.

F. Extent of Agreement. The terms of this lease shall be binding on the heirs, executors, administrators and assigns of both Landlord and Tenant in like manner as upon the original parties. Any notice required by this Lease or by law to be given to Landlord shall be given to: City of Rock Falls, Illinois, c/o Rock Falls City Clerk, 603 West Tenth Street, Rock Falls, Illinois 61071. Any notice required by this Lease or by law to be given to Tenant shall be delivered to Tenant at the address set forth below signature of Tenant.

**LANDLORD:**  
CITY OF ROCK FALLS

William B. Wescott

William B. Wescott, Mayor

Attest:

Michelle K Conkli

City Clerk



**TENANT:**

Printed Name: Mike Gaultrapp

[Signature]

Signature

Address of Tenant:

9179 Tampico Rd  
Street or Road Address

Rock Falls IL 61071  
City, State and ZIP