

NOTICE

Municipal Services Committee
Regular Meeting
Tuesday, April 28, 2020 5:00 pm

Due to social distancing guidelines this meeting will be conducted via web conference at: meet.google.com/vft-xrhn-zdf. The public may also use the teleconference option at +1 504-603-6014 then enter conference pin: 917 858 809#

AGENDA

1. Call meeting to order.
2. Roll call.
3. Civility Reminder.
4. Motion to approve the agenda as presented.
5. Motion to waive the reading and approve the minutes as printed from the February 18, 2020 regular Municipal Services meeting.
6. Citizen Appearances other than agenda items.
7. Customer concerns. Discussion and possible motions for billing adjustments.
 - a. Motion to approve credits as presented by Administration
8. Director's Report
 - a. Parks and Recreation Report
 - b. AMI Project (Placeholder)
 - c. Lake Leota Dam EAP/DFA Update
 - d. Bridge Inspection
 - e. Substation Update
 - f. 5G Installation Update.
9. City Engineer Report
 - a. Water main materials
 - b. WWTP (Placeholder) – Update
 - c. Sub-division/development updates
 - d. Inflow and Infiltration Study
10. Administrative Staff's Report
 - a. Water softener program
 - b. Sidewalk replacement program 2020-22
11. WPPI Report
 - a. Written Report
12. Old Business
13. New Business
14. Upcoming Meeting Date, May 26, 2020

15. Adjourn

James Brooks, Committee Chair

Please turn off all cell phones and electronic devices before meeting commences. If you have any special accessibility issues please contact Evansville City Hall at 608-882-2266 prior to the scheduled meeting. Thank you.

Municipal Services Committee
Regular Meeting
Tuesday, February 18, 2020 5:00 pm
Water & Light Shop, 15 Old Highway 92, Evansville, WI

MINUTES

1. **Call to Order.** Brooks called meeting to order at 5:00 pm.
2. **Roll Call.** Brooks and Ladick were present. Senn was absent. Also present were: Rigg, Jorgensen, Bubolz, Renly, and Roberts.
3. **Civility Reminder.**
4. **Agenda.** Motion to approve the agenda as presented. Ladick / Senn. Motion passed 2-0.
5. **Minutes.** Motion to waive the reading and approve the minutes as printed from the January 28th, 2020 regular Municipal Services meeting. Ladick / Brooks. Motion passed 2-0.
6. **Citizen Appearances.** None.
7. **Customer concerns.** None.
8. **WPPI Report.** Brooks reported on the upcoming APPA Rally in Washington DC. Renly will be attending some classes on pole attachments. Brooks was nominated to serve on the Legislative Energy Institute. Brooks mentioned the Customers First luncheon in April 2020.
 - a. **Written Report.** None.
9. **Director's Report**
 - a. **Parks Report.** Renly stated that the boy scouts will be holding a fishing derby on February 15th was successful with 80-100 kids each catching a fish.
 - b. **AMI Project.** There are 5 electric meters remaining and 290 water meters left.
 - c. **Lake Leota Dam EAP/DFA.** The DNR is questioning some of the calculations but this should be finished soon.
 - d. **Lake Leota Dam Repairs.** The DNR is requesting more information for the DFA. The DNR Dam Grant needs a resolution from council to be submitted.
10. **City Engineer Report**
 - a. **WWTP** – Charter is installing service to the WWTP. We received some grant funding from WPPI/Focus on Energy.
 - b. **Sub-division/Development.** Path design is being worked on.
 - c. **Inflow and Infiltration.** They are still waiting on water flows into the system.
11. **Administrative Staff's Report.**
 - a. **Water Softener Program.** Rigg presented some ideas on how to reduce the chloride at the WWTP. One options is to enforce/incentivize removing timed softeners for efficient softeners like Waterloo WI. Committee asked to look at building codes, number of participants in Waterloo's program, and continue discussion.
12. **Old Business.** None.

13. **New Business.** Renly mentioned Eric will be retiring in April. The transformer that went down is being tested and they are awaiting results. Renly mentioned the DOT is planning on repaving HWY 14 this June. Rigg asked about a light at the intersection of J. Lindeman and HWY 14. While the road is closed and before it is finished it would be ideal for the City to install a light there. Rigg also asked the DPW look at the culverts under the road. If work is needed now would be the time.

14. **Reminder.** Next meeting March 31st, at 5:00 pm.

15. **Adjourn.** Motion to adjourn. Ladick / Brooks. Motion passed 2-0 at 5:35 pm

Ian Rigg, City Administrator.

MSC Director's Report

04/28/20

Parks and Recreation Report:

- Park Bathrooms will be opened soon.
- Wind Prairie park field has been burned off.
- Summer help will be starting soon.
- Volunteers will be working to help pick up parks while using social distancing practices.
- Geese population control - 5 methods given to park board, they agreed on "Away With Geese" method with cost approximating \$3,200.
- Vandalism – Lighting & Cameras? Will be looking into installing microwave motion detectors at shelters as well as possible cameras at a few locations.

AMI Project - AMI Meter counts remain mostly the same due to COVID restrictions. Water meters remaining are 312 with an approximate 2,100 installed. There are 3 electric meters remaining with 4,101 installed.

Lake Leota Dam EAP/DFA Update - We are still waiting to hear back from the DNR regarding approval of the Grant. We received a comment back from the DNR regarding the deeds associated with the park land. I worked with them on clearing that up and now have received notification of a complete grant being accepted.

5G Wireless Nodes / US Cellular- We have received drawings for the four locations that US Cellular will be installing 5G. Comments have been made and sent back for revision. I've also sent in drawings on how we will be providing electric service to each location. We have been working on a few revisions. On the 21st I provided US Cellular with a draft MLA so they can review and provide feedback. This draft is still being worked on by the MEUW sub-committee and we are currently working on the appendices which will be attached to the final MLA. US Cellular at this time has yet to return the application. The process is continuing with poles for the 4 locations arriving last week in preparation of the "Make Ready" order.

Bridge Inspection- Rock County has notified us of bridge inspections that are due this year. Jewell has been contacted and is currently putting an estimate together for us.

Townline Substation -The Hartford Steam Boiler insurance company has agreed to make a payment in the amount of \$263,449.70 less our deductible of \$15,000.00. Our options for replacement were to rewind the existing transformer or to purchase a new transformer. After looking at lead times of both units, assessing risk of outages, load capacity increases and potential for storm damages, we opted to purchase new giving us the quickest install time. We placed a bid ad in the paper on the 15th. We later received a call from another electric utility who had ordered a substation transformer they cannot use. The substation transformer would work for us with a slightly larger capacity and would have no lead time. On Tuesday the 21st we put in an offer to purchase the transformer for \$275,000 and they accepted. We are now awaiting paperwork and will work out the remaining details. This amount offered also includes shipping of the transformer as well as a 5 year warranty. The value of this build is north of \$300,000 so it's an excellent deal

for Evansville. We should have the transformer installed and back in service by mid-May instead of the mid or end of June if we had one built or mid July if we had repaired the existing unit.

**LICENSE AGREEMENT
FOR WIRELESS ATTACHMENTS TO POLES
BETWEEN CITY/VILLAGE/TOWN OF _____
AND
_____**

This LICENSE AGREEMENT (“**Agreement**”) is made as of the date of the last signature below (“**Effective Date**”), is made by and between the [City/Village/Town of _____ (“**City**” “**Village**” “**Town**”), a municipal corporation acting in its capacity as a Wisconsin public utility (“**Utility**”), and _____ (“**Licensee**”), with its principal offices located at _____ .

RECITALS

- A. Licensee desires to install, own, lease, and/or operate Wireless Facilities on or supported by Utility’s Poles to be used to provide Wireless Service.
- B. Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Wireless Attachments on Utility’s Poles, provided that Utility may refuse, on a non-discriminatory basis, to issue a Permit where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes, and/or any other Engineering Standards in accordance with the terms and conditions in this Agreement, except to the extent applicable federal, state, or local law imposes additional or different requirements.

AGREEMENT

THE PARTIES AGREE as follows:

ARTICLE 1: DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

- 1.1 **Affiliate**, when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership control with Licensee.
- 1.2 **Antenna** means an FCC-authorized electrical device by which electromagnetic waves are sent out or received.
- 1.3 **Antenna Area** means the area on a Pole where the Antenna is installed, which is a component of a Wireless Facility. For a Wireless Facility that utilizes the top of a Pole, the Antenna Area shall be the Pole Top Space.
- 1.4 **Communications Space**, consistent with 47 C.F.R. § 1.1402(r), means the lower usable space on a Utility Pole, which typically is reserved for low-voltage communications equipment and which may be accessed by a Qualified Communications Worker.

- 1.5 **Communication Worker Safety Zone** means that space on a Utility Pole measured from the location of the neutral to a location 40 inches below the neutral as described in the National Electrical Safety Code (“NESC”).
- 1.6 **Decorative Streetlight Pole** means a pole structure of a decorative nature owned by Utility that is not part of the electric distribution system, the primary function of which is to support equipment used to provide overnight streetlight service, overhead streetlight service, or all-night security light service. The term “Decorative Streetlight Pole” also includes pole structures that are not embedded in the ground and are of a non-decorative nature with break-away bases
- 1.7 **Emergency** means a condition that poses a clear and immediate danger to life or health or of a significant loss of property or that requires immediate repair or replacement in order to restore electric service to a customer.
- 1.8 **Engineering Standards** means all applicable engineering and safety standards governing the installation, maintenance, and operation of utility facilities and the performance of all work in or around electric utility facilities, including all Utility’s standards as reflected in this Agreement (including **Appendix C**) or otherwise adopted by Utility and the most current versions of the WSEC, the National Electrical Code (“NEC”), the NESC, the regulations of the Occupational Safety and Health Administration (including the rules regarding safety equipment), and the safety and engineering requirements of any state or federal agency with jurisdiction over utility facilities, each of which is incorporated by reference into this Agreement.
- 1.9 **Good Utility Practice** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practices, methods, and acts which, in the exercise of good judgment in light of the facts known at the time the decision was made, could have expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition.
- 1.10 **Laws** mean any federal, state, or local laws, rules, or regulations applicable to the activities contemplated under this Agreement.
- 1.11 **License Fee** means the annual per-Pole fee specified in **Appendix A**, which Licensee is required to pay to Utility for the right to attach its Wireless Facilities to a Pole.
- 1.12 **Make-Ready Survey or Survey** means the field work and analysis necessary to determine whether Licensee’s proposed use of a Utility Pole or Streetlight Pole is feasible based on capacity, safety, reliability, generally applicable engineering purposes, Good Utility Practice, and the Engineering Standards and to confirm or determine the nature of modifications, capacity expansion (i.e., taller or stronger Pole), and Make-Ready Work, if any, necessary to accommodate Licensee’s proposed use of the Pole.
- 1.13 **Make-Ready Work** means all work, as reasonably determined by Utility, required to accommodate Licensee's Wireless Facilities on a Utility Pole or Streetlight Pole and/or to comply with all Engineering Standards and Good Utility Practice. Such work may include, but is not limited to, rearrangement and/or transfer of Utility’s facilities or existing attachments,

- inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole strengthening, and construction.
- 1.14 **Micro Wireless Facility** means a Wireless Facility that does not exceed 24 inches in length, 15 inches in width, and 12 inches in height and that has no exterior Antenna longer than 11 inches and that is strung on cables between existing Utility Poles.
- 1.15 **Normal Business Hours** means Monday through Friday from [_____ a.m. to _____ p.m.]
- 1.16 **Overhead**, when used to refer to Streetlight Pole or Decorative Streetlight Pole, means that the luminaire is fed by aerial electrical distribution facilities owned by Utility.
- 1.17 **Permit** means written or electronic authorization issued by Utility for Licensee to install, modify, or remove a Wireless Attachment (other than a Micro Wireless Facility) in a particular location pursuant to the requirements of this Agreement.
- 1.18 **Permit Application** means a complete application for a Permit in the form attached as **Appendix D** submitted with all applicable documents by Licensee to Utility for the purpose of requesting a Permit to install, modify, or remove a Wireless Attachment (other than a Micro Wireless Facility).
- 1.19 **Pole** means a Utility Pole, Streetlight Pole, or Decorative Streetlight Pole.
- 1.20 **Pole Top Space** means the top portion of a Pole, located within the Supply Space, designated for the installation of one or more (as determined by Utility) enclosed Antennas, the bottom of which shall begin one inch above the highest electrical supply conductor on the Pole and continue for 68 inches as the clearance between the conductor and the pole top Antenna. For Wireless Attachments that use the top of a Pole, the Pole Top Space shall be considered the Antenna Area.
- 1.21 **Post-Construction Inspection** means the inspection by Utility or Licensee or some combination of both to verify that the Wireless Attachments have been made in accordance with Engineering Standards and the Permit.
- 1.22 **Qualified Communications Worker** means a worker meeting all current training and experience requirements of all applicable federal, state, and local work rules, including OSHA Standard 1910.268 (29 C.F.R. § 1910.268).
- 1.23 **Qualified Electrical Worker** means a worker meeting all training and experience requirements of all applicable federal, state, and local work rules, including OSHA Standard 1910.269 (29 C.F.R. § 1910.269).
- 1.24 **Reserved Capacity** means structural capacity or space on a Pole that Utility has identified and reserved for its own core electric utility service and lighting requirements, including space for any and all associated internal communications functions that are essential to the proper operations of such core electric utility service, pursuant to reasonable projected need.
- 1.25 **Slab-Mounted Equipment Cabinet** means a stand-alone, weatherproof, metal, or composite enclosure consisting of a utility metering section and a Wireless Equipment section, which must

be purchased, installed and owned by Licensee, and approved by Utility. [Licensee must submit to Utility for its review and approval the manufacturing specifications and information for the equipment cabinet.] [Brackets] = Optional Language.

- 1.26 **Streetlight Pole** means a pole structure of a non-decorative nature owned by Utility that is not part of the electric distribution system, the primary function of which is to support equipment used to provide overnight streetlight service, overhead streetlight service, or all-night security light service. The term “Streetlight Pole” only includes pole structures embedded in the ground and excludes pole structures with break-away bases.
- 1.27 **Supply Space** means that space on Utility Poles where Utility has installed or may install energized electric conductors and related electric supply equipment. This space is the “supply space,” as defined in the Wisconsin State Electrical Code (Wis. Admin. Code Ch. PSC 114) (“WSEC”). All work performed within the Supply Space shall be performed by Qualified Electrical Workers.
- 1.28 **Unauthorized Wireless Attachment** means any Wireless Facility or Wireless Equipment installed by Licensee on a Pole or on a span of wire or cable between two Poles without a Permit to do so.
- 1.29 **Underground**, when used to refer to Streetlight Pole or Decorative Streetlight Pole, means that the luminaire is fed by underground electrical distribution facilities owned by Utility.
- 1.30 **Utility Pole** means a pole structure owned by Utility and used for the distribution of electricity that is capable of supporting Wireless Attachments, whether or not a streetlight arm is attached to the pole structure. The term “Utility Pole” does not include Streetlight Poles or Decorative Streetlight Poles.
- 1.31 **Wireless Attachment** means a Wireless Facility mounted onto or supported by a Pole, in whole or in part, or attached to a span of wire or cable running between two Poles.
- 1.32 **Wireless Equipment** means any FCC-authorized radio equipment components owned by Licensee and used for a Wireless Facility, including Antennas, remote radio heads, transmitters, transceivers, cables, wires, and related components of a Wireless Facility.
- 1.33 **Wireless Equipment Cabinet** means a weather-tight enclosure that houses Wireless Equipment and electronics.
- 1.34 **Wireless Service** means the provision of authorized voice, video, or data services over a Wireless Facility.
- 1.35 **Wireless Facility** means Wireless Equipment installed at a fixed location that enables Wireless Service between user equipment and a communications network, and includes all of the following: (a) pole-mounted and ground-mounted equipment associated with Wireless Service; (b) radio transceivers, Antennas, or coaxial, metallic, or fiber-optic cable located on, in, under, or otherwise adjacent to a Pole; (c) regular and backup power supplies; (e) Wireless Equipment housed within an associated Wireless or Slab-Mounted Equipment Cabinet.

“Wireless Facility” shall include a Micro Wireless Facility but shall not include any microwave dishes, wireline back haul facilities, or other wires or cables used to connect to other wireless or wired communications facilities or equipment not at the same fixed location.

ARTICLE 2: SCOPE OF AGREEMENT

- 2.1 Grant of License. Subject to the provisions of this Agreement and to Licensee’s application for and receipt of a Permit, Utility hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Wireless Attachments to Utility’s Poles. This grant of authority applies solely to facilities and equipment that Licensee owns.
- 2.2 Parties Bound by Agreement. Licensee and Utility agree to be bound by all provisions of this Agreement and of the Permits issued pursuant to this Agreement.
- 2.3 Permit Issuance Conditions. Utility will issue a Permit to Licensee only when Utility determines, in its sole judgment, reasonably exercised, that (i) it has sufficient capacity to accommodate the requested Wireless Attachments, (ii) Licensee meets all requirements set forth in this Agreement, and (iii) the affected Poles can safely accommodate the proposed Wireless Attachments consistent with all applicable Engineering Standards and Good Utility Practice.
- 2.4 Reservation of Rights. Utility reserves the right to terminate any Permit it issues as necessary to ensure the safe and reliable operation and maintenance of Utility's electric system. In the event that Utility, in its reasonable discretion, believes that it must terminate any Permit in order to ensure safe and reliable operation and maintenance of Utility’s electrical system, the termination provisions of Article 16 shall apply.
- 2.5 Licensee’s Right to Attach.
 - 2.5.1 Nothing in this Agreement, other than the issuance of a Permit, shall be construed as granting Licensee any right to attach its Wireless Equipment to any specific Pole or to compel Utility to grant Licensee the right to attach to any specific Pole.
 - 2.5.2 Nothing in this Agreement shall be construed to grant any Affiliate of Licensee the right to attach to any Poles without entering into a license agreement with Utility and receiving a permit pursuant to such agreement.
 - 2.5.3 No use by Licensee of Utility’s Poles shall create or vest in Licensee any ownership or property rights in those Poles. Notwithstanding anything in this Agreement to the contrary, Licensee is and shall remain a mere licensee.
- 2.6 Necessity of Authorizations. Licensee shall secure all necessary certifications, permits (including for right-of-way use), and franchises from federal, state, and local authorities prior to placing any Wireless Attachments on a Pole.

- 2.7 Necessity of Easements on Private Property. Licensee shall secure all necessary easements or other permissions from the property owner prior to placing any Wireless Attachments on a Pole located on private property.
- 2.8 Reserved Capacity. Access to space on Utility's Poles will be made available to Licensee with the understanding that such access is to Utility's Reserved Capacity. On giving Licensee at least 60 days' prior notice ("**Reclamation Notice**"), Utility may reclaim such Reserved Capacity any time within the five-year period following the installation of Licensee's Wireless Attachment. In the Reclamation Notice, Utility shall give Licensee the option to remove its Wireless Attachment from the affected Pole or to pay for the cost of any Make-Ready Work for which Utility would otherwise be responsible in order to expand the capacity of the affected Pole so that Licensee can maintain its Wireless Attachment on the affected Pole.
- 2.9 Expansion of Capacity. Utility will expand pole capacity for Utility Poles, at Licensee's expense, when necessary to accommodate an additional Wireless Attachment approved pursuant to the issuance of a Permit, and when consistent with local governmental land use requirements of general applicability and all applicable Laws and Engineering Standards. Notwithstanding the foregoing sentence, Utility is under no obligation to install, retain, extend, or maintain any Pole for the benefit of Licensee when such Pole or system of Poles is not needed for Utility's core electric or customer service requirements.
- 2.10 Permitted Uses. The license granted to Licensee is limited to the uses specifically stated in this Agreement, and no other use by Licensee shall be allowed without Utility's express written consent to such use. Nothing in this Agreement shall be construed to require Utility to allow Licensee to use Utility's Poles after the termination of this Agreement.
- 2.11 Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to a Permit within three months of the issuance of the Permit or completion of the Make-Ready Work, if any (or such longer time period as agreed between the parties), the Permit shall be null and void and Utility may use the space scheduled for Licensee's Wireless Attachment. Utility shall grant an extension where Licensee demonstrates that events beyond its control prevented Licensee from exercising any such access right. In such instances, Utility shall endeavor to make other space available to Licensee, upon written request, as soon as reasonably possible.
- 2.12 Agreements with Third Parties. Nothing contained in this Agreement shall be construed as affecting any rights or privileges conferred by Utility, by contract or otherwise, to others not a party to this Agreement to use any facilities or Poles covered by this Agreement. Utility shall have the right to continue to extend such rights and privileges. The privileges granted to Licensee shall at all times be subject to any such contracts and arrangements, including extensions thereof.

ARTICLE 3: FEES

- 3.1 Permit Application Fee. Licensee shall pay to Utility the Permit Application Fee specified in Appendix A at the time the Permit Application is submitted. The Permit Application Fee shall increase by 2% over the then-existing amount on each anniversary of the Effective Date.

- 3.2 License Fee. Licensee shall pay to Utility the applicable License Fee specified in Appendix A on the schedule set out in Section 3.4. The License Fee shall increase by 2% over the then-existing amount on each anniversary of the Effective Date.
- 3.3 Other Fees. The Unauthorized Wireless Attachment Fee and the Failure to Transfer Fee are set out in Appendix A and shall be charged in accordance with Articles 22 and 18, respectively.
- 3.4 Billing Cycle. The total annual License Fee shall be determined based upon the number of Poles for which Permits have been issued under this Agreement and which are in effect on [INSERT DATE - MONTH DAY] of the previous year. The initial License Fee period for each Wireless Attachment after [INSERT DATE - MONTH DAY] of any year shall commence on the date the Permit was issued. The License Fee shall be prorated accordingly. The License Fee shall be due and payable, in advance, on or before [INSERT DATE - MONTH DAY] of each year.
- 3.5 Physical Inventory to Verify Pole Count for Billing Purposes. Utility shall have the right to conduct a physical inventory of Licensee's Wireless Attachments on Utility's Poles upon 90 days' advance written notice. In such event, Utility employees or contractors selected by Utility shall conduct such physical inventory. Licensee shall notify Utility if Licensee chooses to have a representative present during the inventory process. A physical inventory shall be taken no more frequently than once every year; provided, however, that Utility may request and require a physical inventory to be taken more frequently in the event of a default by Licensee in the performance of its obligations hereunder. The cost of such physical inventory shall be shared equally among all users of the Poles, unless such inventory discloses Unauthorized Wireless Attachments, in which case Licensee shall pay the entire cost of the inventory for any Pole(s) determined to have Unauthorized Wireless Attachments.
- 3.6 Payment of Electric Service. Electric service for Licensee's Wireless Equipment will be billed in accordance with the applicable Utility rate for electric service.

ARTICLE 4: PAYMENT OF COSTS

- 4.1 Work Performed by Utility. Licensee shall be responsible to pay for the cost of services provided by Utility in support of the design, installation, and maintenance of Licensee's Wireless Facilities, including Utility's costs for Make-Ready Surveys, Make-Ready Work, and Post-Construction Inspection.
- 4.2 Determination of Charges. Unless otherwise provided in this Agreement, wherever this Agreement requires Licensee to pay for work done or contracted for by Utility, the charge for such work shall include all material, labor, engineering, and administrative costs as applicable. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility's cost accounting system used for recording capital and expense activities. Upon Licensee's request, Utility shall provide Licensee with documentation of charges and costs to be paid by Licensee.
- 4.3 Payment of Invoices. All invoices submitted to Licensee pursuant to this Agreement must be paid within 30 days.

- 4.4 Late Fee. Late fees of 1% per month will be applied to all balances due under this Agreement that are not paid within 30 days of the due date. Failure to pay such fees by the specified payment date shall constitute a default under this Agreement.
- 4.5 Advance Payment.
- 4.5.1 At the discretion of Utility, Licensee shall pay in advance all reasonable costs, including but not limited to, administrative, construction, inspection, and Make-Ready Work expenses, in connection with the Licensee's Wireless Attachments.
- 4.5.2 Wherever Utility requires advance payment of estimated expenses prior to the undertaking of an activity under this Agreement and the actual cost of such activity exceeds the estimated cost, Licensee agrees to pay Utility for the difference in cost if that amount exceeds \$20.00. To the extent that the actual cost of the activity is less than the estimated cost, Utility agrees to refund to Licensee the difference in cost if that amount exceeds \$20.00.

ARTICLE 5: PERMIT APPLICATION REQUIREMENTS

- 5.1 Permit Required.
- 5.1.1 Licensee shall not install, modify, or remove any Wireless Attachments (other than Micro Wireless Facilities) without first applying for and obtaining a Permit, using the application form set out in **Appendix D**. A Permit is not required for routine maintenance, but notice may be required as set out in Section 8.1. For the sake of clarity, a like-for-like replacement of Wireless Equipment is a modification requiring a Permit under this Agreement.
- 5.1.2 Attachments to structures other than Poles within or outside of public right-of-way owned and controlled by the [City/Town/Village] are not covered by this Agreement. With respect to such structures, Licensee must negotiate a separate attachment agreement with the [City/Town/Village].
- 5.2 Micro Wireless Facilities. The following applies to Micro Wireless Facilities:
- 5.2.1 Notwithstanding Section 5.1, Licensee shall not install or remove a Micro Wireless Facility without first giving Utility at least 15 days' advance notice. Such notice shall describe the proposed work, state the location of the work, and provide a work schedule.
- 5.2.2 If, after installation of the Micro Wireless Facility, Utility determines that a Make-Ready Survey is necessary to determine whether the facility may cause the Utility Poles supporting the facility to fall out of compliance with Engineering Standards, Utility may conduct a Make-Ready Survey at Licensee's expense. If, as a result of the Survey, Utility must modify the affected Poles to bring them into compliance, Licensee shall be responsible for the cost of such modifications.

5.3 Licensee's Certification. If Licensee believes that its Wireless Equipment may be installed without the necessity for a Make-Ready Survey, Licensee must certify in its Permit Application that Licensee's Wireless Equipment can be installed on the identified Poles in compliance with all applicable Engineering Standards. Such certification must be made by a Wisconsin-licensed professional engineer.

5.4 Review of Permit Application.

5.4.1 *Complete Application.* Utility shall review Licensee's Permit Application for completeness before reviewing the application on its merits.

5.4.1.1 A complete Permit Application is an application that provides Utility with all the information listed on the Permit Application (application form is attached as **Appendix D**) and all information necessary under this Agreement for Utility to begin to survey the affected Poles.

5.4.1.2 If Licensee submits an incomplete Permit Application, Utility shall, within 10 business days, inform Licensee of that fact and provide a list of information that still needs to be provided. If the resubmitted Permit Application is still incomplete, Utility shall, within five business days, inform Licensee of that fact and provide a list of information that still needs to be provided.

5.4.2 *Issuance of Permit.*

5.4.2.1 Upon receipt of a complete Permit Application, Utility will review the Permit Application within 45 days (or within 60 days if Licensee requests access to multiple Poles) and either grant or deny the Permit.

5.4.2.2 During such 45-day (or 60-day) period, Utility will discuss any issues with Licensee, including any unusual engineering and Make-Ready Work requirements associated with the Permit Application. Utility's acceptance of Licensee's submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

5.4.2.3 For the sake of clarity, the make-ready process described in Sections 5.5, 5.6, and 5.7 applies only to Utility Poles and Streetlight Poles. Decorative Streetlight Poles are governed by Article 19.

5.4.2.4 If Utility denies the Permit, it shall do so in writing and provide an explanation of the reasons the Permit was denied.

5.5 Make-Ready Survey.

5.5.1 *Survey.* During the Permit Application review period, Utility may perform the Make-Ready Survey, using its own personnel or a contractor, and charge Licensee for the cost of the Survey. Alternately, Utility may require Licensee to conduct and submit to Utility a Make-Ready Survey at Licensee's expense.

- 5.5.2 *Notice of Field Inspection.* The party performing the Make-Ready Survey will use commercially reasonable efforts to provide the other party and any affected third-party attachers with three business days' notice of any field inspection that is part of the Make-Ready Survey and will allow the other party and any affected third-party attachers to be present for the field inspection.
- 5.5.3 *Other Attachers.* If the participation of an existing third-party attacher is required for a Make-Ready Survey, Licensee shall coordinate and be responsible for obtaining the third-party attacher's participation.

5.6 Cost Estimate and Payment of Make-Ready Work.

- 5.6.1 *Cost Estimate and Advance Payment.* Licensee will be responsible for payment to Utility for all Make-Ready Work required to accommodate Licensee's Wireless Attachments on a Utility Pole or a Streetlight Pole pursuant to Section 4.5. Utility shall provide an estimate of charges to perform all necessary Make-Ready Work within 14 days of approving a Permit Application, and Licensee shall pay all such charges before Utility commences the Make-Ready Work.
- 5.6.2 *Replacement of Utility Poles and Streetlight Poles.* In the event replacement of a Utility Pole or a Streetlight Pole is required to accommodate the installation of Licensee's Wireless Facility, Licensee shall pay all costs related to such pole replacement including but not limited to the cost of the new pole, transfer of all existing facilities of Utility and any third-party attachers, and removal and disposal of the old Pole. Payment of pole replacement costs does not grant Licensee any ownership interest in the new pole. Licensee shall not be entitled to reimbursement from Utility of any amounts paid to Utility for pole replacements or for rearrangement of attachments on Utility Poles or Streetlight Poles by reason of the use by Utility or other third-party attachers of any additional space resulting from such replacement or rearrangement.

5.7 Make-Ready Work.

- 5.7.1 *Performance of Make-Ready Work.* Make-Ready Work shall be performed only by Utility and/or a contractor authorized by Utility to perform such work. If Utility cannot perform the Make-Ready Work to accommodate Licensee's Facilities within time period specified in the work schedule provided pursuant to Section 5.7.2, Licensee may seek permission from Utility for Licensee to perform such work itself or employ a qualified contractor to perform the work. Any person, company, or contractor who performs Make-Ready Work must be preapproved by Utility. A list of preapproved contractors appears in **Appendix B.**
- 5.7.2 *Work Schedule.* Utility agrees to submit an estimated schedule for the completion of Make-Ready Work within 15 days of receipt by Utility of Licensee's advance payment for the Make-Ready Work. Licensee acknowledges that actual completion of the Make-Ready Work will depend on timely completion of all required Make-Ready Work by Licensee and other third-party attachers that must be completed prior to Utility's performance of its Make-Ready Work. Timely completion of Make-Ready Work may

also depend on whether the work is subject to Wisconsin's public bidding law requirements.

- 5.7.3 *Priority Scheduling of Make-Ready Work.* In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of Utility's Normal Business Hours and Utility agrees to so perform the work, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or Utility's own service restoration.
- 5.7.4 *Notice to Third-Party Attachers.* If the Make-Ready Work necessary to accommodate Licensee's Wireless Attachments involves third-party attachers, Utility shall provide notice to such attachers (with a copy to Licensee, along with the attacher's contact information) upon receipt by Utility of Licensee's advance payment for Make-Ready Work under Section 5.6.1. The notice shall contain the following information: (i) the identity of the Utility Poles requiring Make-Ready Work; (ii) a description of the Make-Ready Work to be performed; (iii) the date such work is scheduled to be completed; and (iv) the date by which the third-party attacher must complete its share of the Make-Ready Work.

ARTICLE 6: INSTALLATION OF LICENSEE'S WIRELESS EQUIPMENT

- 6.1 Installation. Upon completion of all required Make-Ready Work and after Licensee has obtained all required federal, state, and local permits and approvals, and any necessary easements or other permissions under Section 2.7, Licensee may proceed to install the approved Wireless Facility with a qualified workforce. Once installation commences, such work shall be performed continuously until completion, unless Utility otherwise agrees.
- 6.1.1 All of Licensee's installation, removal, and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Utility's Poles or equipment or any other third-party attacher's equipment attached thereto.
- 6.1.2 All of Licensee's installation, removal, and maintenance work performed on Poles or in the vicinity of other Utility facilities, either by its employees or contractors, shall be in compliance with all applicable Laws, Engineering Standards, and Good Utility Practice. Licensee shall ensure that any person installing, maintaining, or removing its Wireless Facilities is fully qualified and familiar with all Engineering Standards, including the specifications contained in **Appendix C** and the provisions of Articles 11, 12, and 13.
- 6.1.3 As the electric service provider, Utility will be responsible for the installation, removal, connection, and disconnection of all electric service connections required to operate Licensee's Wireless Facility.
- 6.1.4 Any strengthening of Poles through the use of guying to accommodate Licensee's Wireless Attachments shall be provided by Licensee at Licensee's expense and to the satisfaction of Utility as specified in **Appendix C**.

- 6.2 Inspections. Utility shall have the right to conduct Post-Construction Inspections of Licensee’s Wireless Facilities at Licensee’s expense.
- 6.3 Radio Frequency Hazard Area. Licensee agrees to provide site-specific radio frequency (RF) emission data and required worker clearances from operational Wireless Facilities.
- 6.4 Ground-Mounted Enclosures. Licensee shall not place new pedestals, vaults, or other ground-mounted enclosures within [10] feet of any Pole or other Utility facility without Utility’s prior written permission. Licensee shall specifically identify this request in its Permit Application. If permission is granted by Utility, all such installations shall be in compliance with the specifications and drawings provided in Appendix C, or other Engineering Standards.
- 6.5 Posting of Contact Number. Licensee shall post a notice at each pole site at which it maintains a Wireless Facility. Such notice shall provide Licensee’s name and a 24-hour contact number, and shall be updated by Licensee whenever its name or contact number changes.

ARTICLE 7: WORK IN AND ACCESS TO THE SUPPLY SPACE

- 7.1 Scheduled Work in the Supply Space. Licensee shall submit to Utility the name of any contractor proposed to perform work on Licensee’s behalf within the Supply Space, together with a summary of the work to be completed and proposed work schedule, at least 10 business days prior to commencement of any installation, maintenance, modification, or removal of Licensee’s Wireless Facilities. No work shall commence until Utility provides its acceptance in writing of such contractors (unless such contractors are on the pre-approved contractor list in Appendix B), summary of work, and work schedule.
- 7.2 Qualified Workers. Licensee warrants that all of Licensee's employees, agents, and contractors that work within the Supply Space are Qualified Electrical Workers and that those who work within the Communications Space are Qualified Communications Workers.
- 7.3 Emergency Access. In the event that Licensee requires emergency access to its Wireless Equipment located in the Supply Space, Licensee shall call Utility’s emergency number to request such access (see Contact Sheet attached as Appendix F).

The caller should provide the following:

- Name of company making report;
- Location of the problem;
- Name of contact person reporting problem;
- Telephone number to call back for a progress report;
- Description of the problem in as much detail as possible;
- Time and date the problem occurred or began;
- Proposed corrective actions; and
- If appropriate, a statement that “**This is an emergency**” and that a problem presents a hazardous situation to the physical plant of Utility, Licensee, or others, as the case may be.

ARTICLE 8: MAINTENANCE OF LICENSEE'S WIRELESS EQUIPMENT

- 8.1 Maintenance and Notice. Licensee shall be responsible for the maintenance of its Wireless Equipment at its sole cost and expense. When maintenance requires work in the Supply Space, Licensee shall comply with the provisions of Article 7. When maintenance does not require work in the Supply Space, no advance notice to Utility is required.
- 8.2 Maintenance to Be Performed During Normal Business Hours. Unless Utility otherwise agrees, Licensee will perform routine maintenance and installation of Wireless Equipment in the Supply Space only during Utility's Normal Business Hours.
- 8.3 Emergency Maintenance; Authorization Required. Utility agrees to not unreasonably delay, restrict, or deny Licensee access to its Wireless Equipment located in the Supply Space for Emergency maintenance. Notwithstanding the above, Licensee shall not access the Supply Space to perform Emergency maintenance without first obtaining Utility's authorization pursuant to Section 7.3 (see Contact Sheet attached as **Appendix F**), which authorization shall not be unreasonably withheld, conditioned, or delayed.
- 8.4 Removal of Abandoned Facilities. At its sole expense, Licensee shall remove any of its Wireless Equipment that has not operated for a continuous period of 12 months. Licensee shall remove such equipment within 180 days of its abandonment, unless Licensee receives written notice from Utility that removal is necessary to accommodate Utility's or a third-party attacher's use of the affected Poles, in which case Licensee shall remove such abandoned equipment within 60 days of receiving the notice. Licensee must obtain a Permit authorizing the removal of the abandoned equipment. If Licensee fails to remove its abandoned equipment within the requisite time period, Section 18.1.2 shall apply.
- 8.5 Annual Reporting Requirements. On each anniversary of the Effective Date, Licensee shall submit a report to Utility in the form attached as **Appendix G** containing the information listed below. Licensee's failure to timely provide the information within 45 days following issuance of written notice by Utility of the failure to timely comply shall be a material breach of this Agreement and also result in Utility suspending all work on Licensee's pending Permit Applications or on such applications as may be submitted after the suspension date. Within three business days of Utility receiving the updated report, Utility shall resume processing Licensee's Permit Applications in the order that they were initially received by Utility.
- 8.5.1 *List of New Wireless Attachments.* Licensee shall provide a list of specific Poles (by Utility Pole number, if available) on which Licensee has installed, during the previous 12-month reporting period, new Wireless Attachments, including any Wireless Equipment for which no Permit was required under this Agreement.
- 8.5.2 *List of Modifications to Wireless Attachments.* Licensee shall provide a list of all Wireless Equipment modified (including equipment replaced by substantially similar equipment) during the previous 12-month reporting period and identify the location of such equipment by Pole (by Utility Pole Number, if available).

- 8.5.3 *List of Nonfunctional Wireless Equipment.* Licensee shall provide a list of all Wireless Equipment that has become nonfunctional during the previous 12-month reporting period. The report shall identify the location of such equipment by identifying the specific Pole (by Utility Pole number, if available) on which the nonfunctional equipment is located and provide a description of the nonfunctional equipment.
- 8.5.4 *Removed Wireless Equipment.* Licensee shall provide a list of all Wireless Equipment removed (and not replaced by substantially similar equipment) from specific Poles (by Utility Pole number, if available) during the previous 12-month reporting period. The report shall identify the Pole from which the equipment was removed, a description of the removed equipment, and indicate the approximate date of removal.
- 8.5.5 *Updated Contact Information.* Licensee shall update its Contact Sheet, and the new Contact Sheet shall be attached as **Appendix F** and shall replace the prior Contact Sheet.
- 8.6 **Priority Restoration of Utility Service.** In the event of widespread interruptions of Utility's and Licensee's Wireless Facilities (e.g., a major storm or other event of force majeure) in connection with damage to Utility's Poles, Utility shall use Good Utility Practice to support restoration of the damaged Poles and Licensee's efforts to restore its Wireless Facilities, consistent with Utility's priority obligations to its core electric utility business. In the event of localized interruptions (e.g., motor vehicle accidents), Utility shall notify Licensee of the incident after taking any required actions to clear and restore the site. Licensee shall reimburse Utility for all support services provided by Utility to clear and/or assist in the restoration of Licensee's Wireless Facilities. Utility shall invoice Licensee for such costs and expenses. Licensee shall pay such invoice within 30 days of receipt.
- 8.7 **Vegetation Management.** Licensee shall be responsible for all tree trimming and other vegetation management necessary for the safe and reliable installation, use, and maintenance of its Wireless Attachments and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. If Licensee's personnel or tree trimming contractor fails to adhere to and comply with applicable Laws and Engineering Standards, Licensee will be required to remedy any and all out-of-compliance tree trimming other vegetation management work. If Licensee fails to carry out the remedy within 30 days after receiving notice of such failure, then Utility may perform the work using its own personnel or a contractor. Licensee shall be responsible for paying Utility for all costs Utility incurs in taking action under this provision.

ARTICLE 9: SPECIFICATIONS

- 9.1 **Specifications.** All of Licensee's Wireless Equipment shall be installed and maintained in accordance with all Engineering Standards (including those set out in **Appendix C**), Good Utility Practice, and any and all Laws. All fees, notices, permits, approvals, certifications, and licenses, and any necessary easements or other permissions under Section 2.7 required for the installation, maintenance, and operation of Licensee's Wireless Facilities shall be obtained and paid for by Licensee and shall be provided to Utility at no charge prior to the start of work and at any other time upon Utility's request.
- 9.2 **Identification of Facilities/Tagging.** Licensee shall identify by tagging its Wireless Facility attached to a Pole or on a span of wire or cable running between two Poles. Tag placement shall

comply with all applicable Engineering Standards.

- 9.3 Protective Equipment. Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall, at its own expense, install protective devices designed to handle the voltage and current impressed on its Wireless Equipment in the event of contact with the electric supply conductor.
- 9.4 Violation of Specifications. If any one of Licensee's Wireless Facilities, or any part thereof, is installed, used, or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within 30 days from receipt of written notice of the violation(s) from Utility, Utility may, at its own option, correct those conditions or proceed to terminate the Permit under Article 16. Utility will attempt to notify Licensee in writing prior to performing such work, whenever practicable. When Utility reasonably believes, however, that a violation poses an immediate threat to the safety of any person, interferes with the performance of Utility's service obligations, or poses an immediate threat to the physical integrity of Utility's electric facilities, Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for paying Utility for all costs Utility incurs in taking action under this provision.

ARTICLE 10: INTERFERENCE

- 10.1 No Interference with Utility. Licensee shall not use or operate its Wireless Equipment in a manner that will interfere with Utility's use of the Pole. For the purposes of this Article 10, the term “**interfere**” or “**interference**” includes, but is not limited to, blocking of access to the Pole, radio frequency interference, mechanical interference, or any interference with Utility's equipment. In the event any such interference occurs, Licensee shall use best efforts to (i) remedy such interference no later than 24 hours after telephone and/or email notice has been sent to Licensee's emergency contact person (see Contact Sheet attached as **Appendix F**) or (ii) cease operation of the Wireless Facility or Wireless Equipment causing the interference until such interference can be eliminated with Utility's support, if required. If Licensee fails to timely remedy the interference or power down the Wireless Equipment responsible for the interference, Utility reserves the right to cut off electricity to the Wireless Facility. If Licensee is unable to eliminate the interference within 14 business days of the telephone and/or email notice, Utility shall have the right to terminate the Permit related to the Wireless Facility causing such interference, and the termination provisions of Article 16 shall apply. If Licensee fails to timely remove its Wireless Facility, Section 18.1.2 shall apply.
- 10.2 Emergencies; Notice. In the event of an Emergency, Utility reserves the right to take any action it deems necessary with respect to any Wireless Facility in order to avert or remedy the Emergency. In such an Emergency, Utility shall give notice to Licensee's emergency contact as soon as reasonably possible.
- 10.3 No Interference with Third-Party Attachers. Licensee shall not use or operate its Wireless Equipment in a manner that will cause interference with any other third-party attacher's use of the Pole, provided that such other third-party attacher's installation predates the installation of Licensee's Wireless Facility causing the interference. In the event any such interference occurs,

Licensee will (i) remedy such interference within 72 hours after learning of such interference or (ii) cease operation of its Wireless Facility or Wireless Equipment causing the interference until such interference can be eliminated with Utility's support, if required. If Licensee is unable to so eliminate such interference, Utility shall have the right to terminate the Permit for the Wireless Facility causing such interference, and the termination provisions of Article 16 shall apply. Licensee shall cease operation of such Wireless Facility immediately upon receipt of notice pursuant to Article 16. If Licensee fails to timely remove its Wireless Facility, Section 18.1.2 shall apply.

- 10.4 Cooperation for Access. If Utility, Licensee, or other authorized third-party attachers require access to the Pole and such access is restrained as a result of Utility's or Licensee's operational equipment, Licensee and Utility shall work cooperatively to develop and support access requirements. Such work may require temporarily ceasing wireless operations to comply with such standards.
- 10.5 Maintenance on Utility Pole Structures. Utility may, in its sole discretion reasonably exercised, de-energize any Wireless Equipment mounted on a Pole any time its personnel or contractors are doing maintenance work on such Poles. Utility shall endeavor to provide at least 24-hours' advance notice of planned maintenance work to Licensee's Network Operations Center by voice message or email (see Contact Sheet attached as Appendix F). Advance notice of the de-energization of Wireless Equipment need not be provided in Emergency situations.

ARTICLE 11: INSURANCE

- 11.1 Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:
- 11.1.1 *Workers' Compensation and Employers' Liability Insurance.* Statutory workers' compensation benefits and employers' liability insurance policy with a limit of \$1,000,000 each accident/disease/policy limit. This policy shall include a waiver of subrogation in favor of Utility.
- 11.1.2 *Commercial General Liability Insurance.* Commercial general liability policy with a limit of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including, but not limited to, premises, operations, products and completed operations, personal and advertising injury, blanket contractual coverage, independent contractor's coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCU coverage).
- 11.1.3 *Commercial Automobile Liability Insurance.* Commercial automobile liability policy in the amount of \$5,000,000 combined single limit each accident for bodily injury or property damage covering all owned, hired, and non-owned autos and vehicles.
- 11.1.4 *Excess/ Umbrella Liability Insurance.* Excess/umbrella liability policy with a limit of \$1,000,000 per occurrence and aggregate providing coverage to be in excess of

employers' liability, commercial general liability, and automobile liability insurance required above.

- 11.1.5 *Property Insurance.* Each party to this Agreement will be responsible for maintaining property insurance on its own facilities, buildings, and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Utility's facilities to fully protect against hazards of fire, vandalism, and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance, or shall self-insure such exposures.
- 11.2 Qualification. The insurer must be authorized to do business under the laws of the State of Wisconsin and have an "A" or better rating in Best's Guide.
- 11.3 Contractors and subcontractors. Licensee shall require all of its contractors and their subcontractors performing any work for Licensee under this Agreement to obtain and maintain substantially the same coverage with substantially the same limits as required of Licensee. Prior to any such contractor or its subcontractors performing any work for Licensee under this Agreement, Licensee shall furnish Utility with a Certificate of Insurance for each such contractor or subcontractor.
- 11.4 Certificate of Insurance; Other Requirements.
- 11.4.1 Upon the execution of this Agreement and within 15 days of each insurance policy expiration date during the term of this Agreement, Licensee will furnish Utility with a certificate of insurance evidencing the coverage required by this Agreement. The certificates shall reference this Agreement and the waiver of subrogation required in Section 11.1.1.
- 11.4.2 Utility shall be included as an "**Additional Insured**" as its interest may appear under this Agreement under all of the policies required by Section 11.1, except worker's compensation and employer's liability, which shall be so indicated on the certificate of insurance.
- 11.4.3 All policies, other than worker's compensation, shall be written on an occurrence and not on a claims-made basis.
- 11.5 Limits. The limits of liability set out in this Article 11 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any relevant factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans or laws which would materially increase or decrease Utility's or Licensee's exposure to risk.
- 11.6 Accident or Incident Reports. Licensee shall promptly furnish Utility with copies of any accident or incident report(s) sent to Licensee's insurance carriers covering accidents or incidents

occurring in connection with and/or as a result of the performance of the work under this Agreement.

- 11.7 No Limitations. Nothing contained in these insurance requirements is to be construed as limiting the extent of either party's responsibility for payment of damages resulting from either party's activities under this Agreement or limiting, diminishing, or waiving Licensee's obligation to indemnify, defend, and save harmless Utility as set forth in Article 12.
- 11.8 Primary Insurance. It is the intent of both parties that Licensee's policies of liability insurance in place in accordance with the provisions of this Article 11 shall be primary insurance and shall protect both Licensee and Utility from losses arising from the performance of this Agreement.

ARTICLE 12: INDEMNIFICATION AND LIABILITY

- 12.1 Indemnification. Licensee accepts the property in its present condition, as is and where is. Licensee, and its employees, agents, contractors, or subcontractors ("**Indemnifying Parties**") shall defend, indemnify, and hold harmless the [City/Village/Town] and its officials, employees, commissioners, board members, council members, agents, and contractors ("**Indemnified Parties**") against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Utility under any worker's compensation laws or under any plan for employee disability and death benefits), and expenses (including reasonable attorney's fees of Utility and all other costs and expenses of litigation) ("**Covered Claims**") that may be asserted by any person or entity and arise in any way, including any act, omission, failure, negligence, or willful misconduct, in connection with the construction, maintenance, repair, use, relocation, transfer, or removal by Licensee or by another Indemnifying Party, of Licensee's Wireless Equipment, except to the extent of Utility's negligence or willful misconduct gives rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:
- 12.1.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents as associated with Licensee's use;
- 12.1.2 Cost of work performed by Utility that was necessitated by Licensee's or another Indemnifying Party's failure to install, maintain, use, transfer, or remove Licensee's Wireless Equipment in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes Utility to perform on Licensee's behalf;
- 12.1.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee or other Indemnifying Party pursuant to this Agreement;
- 12.1.4 Liabilities incurred as a result of Licensee's violation, or a violation by an Indemnifying Party of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

12.2 Procedure for Indemnification.

- 12.2.1 Utility shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Utility, Utility shall give the notice to Licensee no later than 15 days after Utility receives written notice of the action, suit, or proceeding.
- 12.2.2 Utility's failure to give the required notice will not relieve Licensee from its obligation to indemnify Utility unless, and only to the extent that, Licensee is materially prejudiced by such failure.
- 12.2.3 Licensee will have the right at any time, by notice to Utility, to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to Utility. Utility agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, Utility shall have the right to participate in the defense at its own expense.
- 12.2.4 If Licensee assumes the defense of a third-party claim as described above, then in no event will Utility admit any liability with respect to, or settle, compromise, or discharge, any third-party claim without Licensee's prior written consent.
- 12.2.5 Licensee shall take prompt action to defend and indemnify the Indemnified Parties against Covered Claims, actual or threatened, but in no event later than notice by Utility to Licensee of the service of a notice, summons, complaint, petition or other service of a process against an Indemnified Party alleging damage, injury, liability, or expenses attributed in any way to this Agreement, the work to be performed under this Agreement, or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of Licensee or other Indemnifying Party. Licensee shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim.

ARTICLE 13: LIMITATION OF LIABILITY

- 13.1 Limited Liability. Regardless of any other provision of this Agreement, and with the exception of any third-party bodily injury or third-party property damage obligations, under no circumstances will either party be liable to the other, whether in contract, tort (including negligence and strict liability), warranty, or any other legal theory, for any incidental, indirect, special, or consequential damages whatsoever, such as, but not limited to, loss of profits or revenue, cost of capital or of substitute use or performance, interruptions to operations, or for claims for damages by or to the other party's customers. Furthermore, Utility will not be held liable for the accuracy or integrity of any data or message communicated over Licensee's Wireless Facilities.

- 13.2 Licensee's Assumption of Risk. In addition, Licensee expressly acknowledges that Licensee's Wireless Facilities are exposed to many risks beyond the reasonable control of Utility, including events of force majeure. Except as expressly provided in this Agreement, Licensee shall assume all risk of loss to Licensee's Wireless Facilities that may arise in connection with such hazards.
- 13.3 Environmental Hazards. Licensee represents and warrants that its use of Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Poles or transport to Poles any Hazardous Substances, and that Licensee's Wireless Equipment will not constitute or contain and will not generate any Hazardous Substances in violation of state or federal law now or hereafter in effect, including any amendments. "**Hazardous Substance**" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Wireless Equipment would not release such Hazardous Substances.
- 13.4 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Utility of the provisions of Wis. Stat. § 893.80, or any other applicable limits on municipal liability.

ARTICLE 14: PERFORMANCE BOND

- 14.1 Duty to Obtain Bond. Licensee shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing faithful adherence to the requirements of this Agreement. The bond shall be: (a) in an amount not less than [**\$** _____]; (b) issued by a surety company licensed to do business in the State of Wisconsin; and (c) under terms and conditions acceptable to the [**Town/Village/City**] Attorney.
- 14.2 Time Period to Obtain Bond. Licensee shall obtain the bond prior to making any Wireless Attachments under this Agreement and no later than the 30th day after the Effective Date. Licensee shall renew the bond as necessary to keep it in full force throughout the term of this Agreement and for so long thereafter as Licensee maintains any Wireless Attachments on Utility's Poles.
- 14.3 Bond Does Not Limit Other Rights and Remedies. The rights reserved to the Licensor under the bond are in addition to all other rights. No action, proceeding, or exercise of a right regarding the bond shall affect the Licensor's rights to demand full and faithful performance under this Agreement or limit Licensee's liability for damages.

ARTICLE 15: TERM

- 15.1 Term. This Agreement is effective as of the Effective Date and shall continue in effect for an initial term of five years. Thereafter, this Agreement shall automatically renew from year to year unless terminated by either party by giving written notice of its intention to do so not less than 90 days prior to the end of any term.

ARTICLE 16: TERMINATION

16.1 Utility's Right to Terminate. Utility shall have the right to terminate this Agreement and/or any Permit, if:

16.1.1 Licensee fails to comply with any material provision of this Agreement or defaults in any of its obligations under this Agreement, and Licensee fails within 45 days after written notice from Utility to correct such noncompliance or default. In such event, Utility may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the Permit covering the Wireless Attachment(s) with respect to which such default or noncompliance shall have occurred. Excepting safety-code related defaults, if the default is of such a nature that it cannot be corrected within 45 days, Licensee's obligation is satisfied if Licensee, within 45 days, submits to Utility a reasonable written plan and work schedule to correct the default promptly and completes that plan on schedule and with reasonable diligence.

16.1.2 Licensee's Wireless Facilities are installed, operated, used, maintained, and/or modified in violation of any Law or in aid of any unlawful act or undertaking. Utility agrees not to terminate any Permit under this provision for a period of 45 days, provided that Licensee ceases operations at the site of the violation(s) and is making diligent efforts to correct the violation(s). Licensee shall provide Utility with prompt written notice of any such action under which operation or use of the Wireless Facility or Facilities is denied, revoked, canceled, or reinstated.

16.1.3 Any authorization that may be required by any federal, state, or local government or regulatory authority with respect to the installation, operation, use, maintenance, or modification of a Wireless Facility is denied, revoked, or canceled. Utility agrees not to terminate any Permit under this provision for a period of 180 days after receipt of notice of the denial, revocation, or cancellation, provided that Licensee ceases operations at the affected site and is making diligent efforts to obtain or reinstate such authorization(s). Licensee shall provide Utility with prompt written notice of any such action under which operation or use of the Wireless Facility is denied, revoked, canceled, or reinstated.

16.1.4 Utility, in its reasonable discretion, believes that termination of any Permit is necessary to ensure the safe and reliable operation and maintenance of Utility's electric system under Section 2.4. Utility will provide at least 30 days' advance notice of termination of any Permit pursuant to this Section.

16.2 Removal of Wireless Equipment on Termination. In the event of termination of this Agreement, Licensee shall, in lieu of a Permit Application, submit a plan and schedule to Utility under which Licensee will remove, using its own personnel or a contractor, all of its Wireless Facilities and associated Wireless Equipment located on or near Utility's Poles within 90 days from date of termination; provided however, that Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Utility until Licensee's Wireless Facilities and associated Wireless Equipment are removed. In the event that Licensee fails to vacate the Pole or fails to remove all of its Wireless Equipment, Utility shall have the right, after giving at least 10 days' prior written

notice to Licensee, to remove the remaining Wireless Equipment in which event such Wireless Equipment may be retained by Utility as its property without accounting to Licensee therefore, and the expense of such removal and repairs shall be charged to and paid by Licensee without credit for the value, if any, of such Wireless Equipment. Section 18.1.2 applies should Licensee fail to comply with this Section 16.2.

- 16.3 Survival of Obligations. Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations under this Agreement shall continue with respect to any claims or demands related to Licensee's Wireless Facilities.

ARTICLE 17: DUTIES, RESPONSIBILITIES, AND EXCULPATION

- 17.1 Duty to Inspect. Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Poles, or the premises surrounding the Poles, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility's Poles and/or the premises surrounding the Poles prior to commencing any work on Utility's Poles or entering the premises surrounding the Poles.
- 17.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its agents, servants, employees, contractors, and subcontractors with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 17.3 **DISCLAIMER. UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO ITS POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 17.4 Missing Labels. Licensee acknowledges that Utility does not warrant that all Poles are properly labeled and agrees that Utility is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Poles. Licensee further agrees to notify Utility immediately if labels or tags are missing or otherwise believed to be improper; however, Utility agrees that Licensee is not liable for any injuries or damages caused by or in connection with Licensee's failure to so notify Utility.
- 17.5 Duty to Supervise. The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, servants, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other equipment of Utility, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an Emergency. Licensee shall ensure that its employees, servants, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of Utility, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, servants, agents, contractors, and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in an Emergency in which it

may be necessary to de-energize any part of Utility's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

17.6 Requests to De-energize.

17.6.1 In the event Utility, in its sole discretion, elects to de-energize any equipment or line at Licensee's request and for Licensee's benefit and convenience in performing a particular segment of any work, Licensee shall reimburse Utility in full for all reasonable costs and expenses incurred in order to comply with Licensee's de-energization request. Except during an Emergency, Utility shall provide, upon Licensee's request, an estimate of all costs (including lost revenue) and expenses to be incurred in accommodating Licensee's de-energization request and, upon reviewing such estimate, Licensee shall confirm whether it intends to continue or withdraw such request.

17.6.2 Licensee shall not make or break electrical connection at Utility's electric service point at any time without Utility's authorization.

17.7 Interruption of Service. In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of Utility's, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages directly resulting therefrom and shall notify Utility immediately.

17.8 Duty to Inform. Licensee further warrants that it understands the imminent dangers **(INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION)** inherent in the work necessary to make installations and removals and to engage in operations on Utility's Poles by Licensee's employees, servants, agents, contractors, or subcontractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, servants, agents, contractors, and subcontractors of such dangers, and to keep them informed regarding same.

ARTICLE 18: TRANSFERS AND ALLOCATION OF COSTS

18.1 Required Transfer, Rearrangement, or Removal of Licensee's Wireless Attachments.

18.1.1 If Utility reasonably determines that it is necessary for Licensee's Wireless Attachments to be transferred to a different or new Pole, rearranged on the same Pole, or removed from the Pole (including, due to an overhead to underground pole-line conversion or termination of a Permit) (collectively, "**Transfer**"), Licensee shall perform such work at its own expense within 40 days after receiving written notice from Utility or within such other time period for the particular type of Transfer as is set out elsewhere in this Agreement ("**Transfer Period**").

18.1.2 If Licensee fails to Transfer its Wireless Attachments as required under this Agreement within the requisite Transfer Period, Utility shall have the right either to charge Licensee the Failure to Transfer Fee or to do the work itself using its own personnel and/or contractors and charge Licensee 110% of the actual costs incurred. Utility shall not be

liable for damage to Licensee's Wireless Equipment except to the extent provided in Article 13.

- 18.2 Allocation of Costs. The costs for any Transfer of Licensee's Wireless Attachments or the modification or replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Utility's cables or wires) shall be allocated to Utility, Licensee, or other third-party attacher on the following basis:
- 18.2.1 If Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification or replacement of the Pole, and Licensee shall be responsible for the costs associated with the Transfer of its own Wireless Attachments. Prior to making any such modification or replacement, Utility shall provide Licensee prior written notice in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Wireless Attachments. If Licensee elects to add to or modify its Wireless Attachments within one year after receiving such notice, Licensee shall bear a pro rata share of the costs incurred by Utility in making the space on the Poles accessible to Licensee.
- 18.2.2 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the Transfer of any third-party attacher's equipment. Licensee must submit to Utility evidence, in writing, that it has made arrangements to reimburse all affected third-party attachers for the cost to Transfer such attacher's equipment. Utility shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the Transfer of a third-party attacher's equipment pursuant to this provision.
- 18.2.3 If the modification or the replacement of a Pole is the result of an additional attachment or the modification of an existing attachment sought by an attacher other than Utility or Licensee, the attacher requesting the additional or modified attachment shall bear the entire cost of the modification or pole replacement as well as the costs associated with the Transfer of Licensee's Wireless Attachments. Licensee shall cooperate with such third-party attacher to determine the costs of the Transfer of Licensee's Wireless Attachments.
- 18.2.4 If a Pole must be modified or replaced for reasons unrelated to the use of the Pole (e.g., storm, accident, deterioration), Utility shall pay the costs of such modification or replacement; provided however, that Licensee shall be responsible for the costs of the Transfer of its Wireless Attachments.
- 18.3 Treatment of Multiple Requests for Same Pole. If Utility receives Permit Applications for the same Pole from two or more prospective attachers within a 60-day period, and accommodating their respective requests would require modification or replacement of the Pole, Utility will evenly allocate among such attachers the applicable costs associated with such modification or replacement.

18.4 Emergencies/Advance Notice.

18.3.1. The written advance notification requirement of this Article 18 shall not apply in an Emergency. During an Emergency, Utility shall provide such advance notice as is practical, given the urgency of the particular situation including a telephone call to Licensee's emergency number (see Contact Sheet attached as **Appendix F**). Utility shall then provide written notice of any such actions taken within 72 hours following the occurrence.

18.3.2 When Utility reasonably determines that a transfer of Licensee's Wireless Equipment is immediately necessary due to an Emergency, Licensee agrees to allow such Transfer. In such instances, Utility will, at its option, either perform the Transfer using its personnel, and/or contractors. Utility shall not be liable for damage to Licensee's Wireless Equipment except to the extent provided in Section 13.1. Utility shall provide written notice of any such actions taken within 10 days of the occurrence.

18.5 Utility Not Required to Relocate. No provision of this Agreement shall be construed to require Utility to relocate its electric facilities on a Pole for Licensee's benefit.

ARTICLE 19: ATTACHMENT TO AND REPLACEMENT OF DECORATIVE STREETLIGHT POLES

19.1 Conditions for Attachment. In the event that no existing Utility Pole or Streetlight Pole is suitable for Licensee's purposes under this Agreement, Licensee may seek a Permit to attach to a Decorative Streetlight Pole or to replace an existing Decorative Streetlight Pole with a replacement pole that would accommodate Licensee's Wireless Attachment. Utility will not issue such a Permit unless the following conditions are met:

19.1.1. The original equipment manufacturer of the Decorative Streetlight Pole makes hardware specifically for Wireless Facility attachment, and Utility approves such hardware.

19.1.2. The attachment of the Wireless Facility does not change the primary purpose of the Decorative Streetlight Pole, which shall remain the purpose for which the pole was originally installed, or cause the pole to be a "wireless tower or base station," within the meaning of Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455.

19.1.3. If luminaires and mast arms are replaced, the replacements shall match the arc and style of the original luminaire and mast arm, unless otherwise approved by Utility. The replacement luminaire and mast arm shall be at the same height above the ground as the existing luminaire and mast arm.

19.1.4. To the extent commercially available and technologically compatible with Licensee's local network, Licensee shall use Wireless Equipment that has the smallest visual profile and shall be sized appropriately to the scale of the Decorative Streetlight Pole.

A decorative transition shall be installed over the equipment enclosure upper bolts, or a decorative base cover shall be installed to match the equipment enclosure size. All hardware connections shall be hidden from view.

19.2 Standards for Replacement of Decorative Streetlight Poles. The following additional standards apply to the replacement of an existing Decorative Streetlight Pole (“**Replacement Pole**”):

19.2.1 Replacement Poles shall be of a similar design, material, and color as the replaced pole and other Decorative Streetlight Poles within the immediate area, unless Utility approves an alternative design proposed by Licensee.

19.2.2 All Replacement Poles shall be constructed in the same place as the pole being replaced.

19.2.3 Replacement Poles shall be designed and engineered to support a luminaire and, if applicable, a mast arm of length equal to that of the existing pole to be replaced or of a length approved by Utility based on the location of such pole.

19.2.4 All Replacement Poles shall have new light fixtures of the same manufacturer, model, and light output as the removed fixture and nearby light fixtures, or as otherwise approved by Utility.

19.2.5 Replacement Poles, including but not limited to the pole itself, head, fixtures, mast arm (if applicable) and electrical components, shall have a five-year manufacturer’s replacement warranty.

19.2.6 Replacement Poles shall meet all applicable Engineering Standards, including American Association of State Highway and Transportation Officials structural guidelines for roadway applications and the American National Standards Institute requirements for vibrations.

19.2.7 The height of the Replacement Poles be measured from the ground to the top of poles. All Replacement Pole heights shall be consistent with those of the poles being replaced.

19.2.8 Each Replacement Pole component shall be architecturally compatible to create a cohesive aesthetic.

19.3 Cost Responsibility. Licensee shall be solely responsible for the following costs:

19.3.1 The cost of removing the pre-existing Decorative Streetlight Pole in a manner that will allow its reuse and delivering the pole to Utility’s storage yard.

19.3.2 The cost to design and install the Replacement Pole and to purchase and deliver at least one back-up Replacement Pole to Utility’s storage yard to be used in the event the Replacement Pole is damaged and needs to be replaced. Utility may require purchase and delivery of additional back-up Replacement Poles, taking into account the number of Replacement Poles Licensee installs at any one time. Licensee shall be responsible

for replenishing Utility's inventory of back-up Replacement Pole(s) as needed to maintain the required number in utility's storage yard at all times.

- 19.3.3 In the event a Replacement Pole is damaged and, in Utility's sole judgment, needs to be replaced, Utility shall, using its own personnel or a contractor, remove the damaged pole and install a back-up Replacement Pole. All such work shall be done at Licensee's expense. Licensee shall be responsible for replacing its Wireless Attachments on the back-up Replacement Pole.
- 19.4 Ownership of Replacement Poles. Upon completion of construction, inspection and acceptance by Utility of a Replacement Pole and upon delivery to Utility of a back-up Replacement Pole, ownership of such Replacement Poles shall transfer to Utility.

ARTICLE 20 NOTICES

- 20.1 Written Notices. Unless otherwise provided in this Agreement, any notice, request, consent, demand, or statement contemplated to be made by one party to or upon the other shall be in writing and shall be treated as duly delivered when it is either (i) personally delivered to the office of Utility in the case of notice to be given to Utility, or personally delivered to the office of Licensee in the case of notice to be given to Licensee or (ii) deposited in the United States Mail and properly addressed to the party to be served as follows:

If to Utility, to:

If to Licensee, to:

or to such other address as either party may, from time to time, give the other party in writing.

- 20.2 Electronic Notices Allowed. The above notwithstanding, the parties may agree in specific instances to use electronic communications (such as email) for notifications related to the Permit Application and approval process and necessary transfers or pole modifications, but not for tender of any legal notices. Licensee shall provide a local contact for all such notices upon execution of this Agreement.
- 20.3 Licensee's 24-hour Emergency Number. Licensee shall main a staffed 24-hour emergency telephone number (see Contact Sheet attached as **Appendix F**), not available to the general public, by which Utility can contact Licensee to report damage to Licensee's Wireless Facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to Utility's concerns and requests. Licensee's

failure to maintain an emergency contact number shall eliminate Utility's liability to Licensee for any action Utility deems reasonably necessary given the specific circumstances.

ARTICLE 21: ASSIGNMENT

- 21.1 Assignment. Licensee may not assign or otherwise transfer its rights under this Agreement to any other person or entity without Utility's prior written consent, which consent shall not be unreasonably withheld.
- 21.2 Sub-Licensing. Licensee shall not sub-license any rights under this Agreement to any third party or Affiliate. Any such action shall constitute a material breach of this Agreement.
- 21.3 Obligations of Assignee/Transferee and Licensee. No assignment or transfer by Licensee of this Agreement shall be effective until the assignee or transferee acknowledges to Utility in writing that it agrees to assume all of Licensee's obligations arising under this Agreement. Licensee shall furnish Utility with written notice of the name, address, and contact information for the transferee or assignee.

ARTICLE 22: UNAUTHORIZED WIRELESS ATTACHMENTS

- 22.1 Unauthorized Wireless Attachment Fee.
- 22.1.1 Utility, without prejudice to its other rights or remedies under this Agreement, including but not limited to requiring Licensee to immediately remove an Unauthorized Wireless Attachment, may require Licensee to submit a Permit Application and pay the Unauthorized Wireless Attachment Fee set out in **Appendix A** within 30 days after the date of written or email notification from Utility of an Unauthorized Wireless Attachment.
- 22.1.2 If such application is not received by Utility within the specified time period, Licensee shall remove the Unauthorized Wireless Attachment within seven days at its sole expense. In the event Licensee fails to remove the Unauthorized Wireless Attachment within the seven-day period, Utility may remove the Unauthorized Wireless Attachment without prior notice and without liability, using its own personnel and/or contractors, and charge Licensee 110% of the actual cost incurred.
- 22.2 Failure to Act. No act or failure to act by Utility under this Article 22 shall be deemed a ratification or grant of permission to Licensee to maintain the Unauthorized Wireless Attachment.

ARTICLE 23: PAYMENT OF TAXES

- 23.1 Each party shall pay all taxes and assessments lawfully levied on its own property, facilities, and equipment, whether free-standing or attached to Utility's Poles. The taxes and assessments that are levied on Utility's Poles shall be paid by Utility, but any tax, fee or charge levied on Utility's Poles solely due to Licensee's use shall be paid by Licensee. Licensee agrees that if any tax, fee, or charge is levied against Utility solely due to Licensee's equipment or facilities being attached

to or supported by Utility's Poles, Licensee will reimburse Utility the full amount of said tax, fee, or charge.

ARTICLE 24: MISCELLANEOUS PROVISIONS

- 24.1 Amending Agreement. This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both parties.
- 24.2 Entire Agreement. This Agreement and its appendices constitute the entire agreement between the parties concerning attachment of Licensee's Wireless Facilities to Utility's Poles. Unless otherwise expressly stated in this Agreement, all previous wireless attachment agreements, whether written or oral, between Utility and Licensee are superseded and of no further effect (except as to provisions that survive termination).
- 24.3 Severability. If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement, but rather it is the intent of the parties that this Agreement be administered as if it did not contain the invalid provision.
- 24.4 No Waiver. If Utility fails to take action to enforce compliance with any of the terms and conditions of this Agreement, such failure shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.
- 24.5 Wisconsin Law Shall Apply. This Agreement is deemed executed in the State of Wisconsin and shall be construed under the laws of the State of Wisconsin without regard to its conflict of laws principles.
- 24.6 Venue for Litigation. In the event suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that proper venue for such action or suit shall lie in the Circuit Court, County of [REDACTED], State of Wisconsin.
- 24.7 Incorporation of Recitals and Appendices. The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.
- 24.8 Compliance with Laws. The parties shall comply with any and all Laws in performing their obligations under this Agreement.
- 24.9 No Third-Party Beneficiaries. Except as otherwise expressly stated, the parties have no intent to, and do not, create any third-party rights or interests in this Agreement.
- 24.10 Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original. Execution of this Agreement by facsimile or electronic signatures shall have the same legally binding effect as an original paper version.

Utility and Licensee have executed this Agreement in duplicate on the dates set forth on the signature page(s) that follows.

[SIGNATURE PAGE FOLLOWS]

[CITY/VILLAGE/TOWN OF _____,]
acting in its capacity as a Wisconsin public utility

By _____

Name: _____

Title: _____

Date: _____

[WIRELESS CARRIER]

By _____

Name: _____

Title: _____

Date: _____

Item 9

From: [Brian Berquist](#)
To: [Ian Rigg](#); ["James Brooks"](#); jon.senn@ci.evansville.wi.gov; ["Ben Ladick"](#); chad.renly@ci.evansville.wi.gov; ["Dale Roberts"](#); kerry.lindroth@ci.evansville.wi.gov; ["Jason Sergeant"](#); ["Cory Neeley"](#); ["Bill Hurtle"](#)
Cc: ["Donna Hammett"](#); ["Kim Dienberg"](#)
Subject: Summary for Engineering Items
Date: Monday, April 27, 2020 11:16:53 AM

All-

Below please find a summary for my items tomorrow evening:

Water Main materials:

We get this question fairly regularly from the communities we work with. Some communities really like it, some really don't, and some are in the middle and alternate bid the two materials. From a technical standpoint, both PVC and Ductile Iron are certainly fine and meet all AWWA and industry standards. There are almost always cost savings for non-metallic pipe, but both are commodities and there have been periods (particularly post-Katrina) when PVC becomes more costly. In the recent past, the City projects have been too small to realize enough savings for the Water Utility to seriously consider allowing PVC.

We suggest that the matter be considered with both City officials and the Utility staff that will be charged with operating the system with PVC components to determine if there is interest in allowing plastic water main. I am unsure as to whether the use of plastic water laterals is also being proposed. There have been cases in the most recent cold winters where the Utility had to thaw laterals with electrical current, so that may need to be a separate discussion than water mains.

WWTP Update:

The project is almost entirely complete. Only the new internet connection needs to be installed and the control system adjusted to utilize it. The final pay documents are ready for signature. DNR will at some point require closing out the loan (to begin regular payments), which could impact how much of the Inflow/Infiltration study can be funded under that program.

Subdivision/development Update:

There are several construction items that are anticipated in 2020 on the Westfield Meadows development. Surface asphalt on approximately 7 blocks, lower asphalt on another 3 blocks, and the perimeter multi-use path are expected. Discussions are ongoing with the Developer's to obtain a schedule

Similarly, the paving on Windmill Ridge is anticipated to occur.

Sidewalk Repair Program:

We have put together construction documents and draft Preliminary Assessment Report for the originally contemplated streets to receive sidewalk repairs. However, the estimated costs (~\$170k) far exceed the 2020 budget of \$55k. We suggest the City reduce the work scope to both provide a more realistic project size to the bidders and reduce the number of residents that will receive the assessment report.

On a similar note, the assessment hearing will need to be held for the impacted properties. Would you like to postpone this (and any actual construction) until in-person meetings are allowed?

Inflow/Infiltration:

We are still waiting on a significant (2-3 inches plus) rainfall to get enough leakage to really highlight and prioritize the trouble spots. As the WWTP project comes to a close, it should be discussed whether we should lower the trigger point (go out in smaller rain events) to try to include some of this effort in the Clean Water Fund loan before DNR requires that to be closed out.

Brian

Brian R. Berquist, P.E., President

brian@tcengineers.net

Town & Country Engineering, Inc.

2912 Marketplace Drive, Suite 103

Madison, WI 53719

(608) 273-3350 Cell: (608) 219-6768

MSC Administration Report

04/28/20

Water Softener Program

Chad Renly called different plumbers in the area to get price differences on water softeners to help guide us on what we may offer to people seeking to change out their softener as well as future enforcement for new construction.

- *Company #1*
 - *Normal On Demand Softener: \$1000 - \$1200*
 - *HE On Demand Softener: \$1895*
 - *Inspection Rate: 10 point inspection \$40*
- *Company #2*
 - *Normal On Demand Softener: \$789 - \$899*
 - *HE On Demand Softener: \$1200*
 - *Inspection Rate: \$75*
- *Company #3*
 - *Normal On Demand Softener: \$825 (Is also HE)*
 - *HE On Demand Softener: \$1600*
 - *Inspection Rate: \$99.50*

The City of Waterloo has had few participants in their program. Whether it is the dollar amount or campaigning we are not fully aware of. There is a \$400-800 difference between an on-demand softener and a timed one. There is also a \$40 to \$100 price range on inspections.

To reduce our salt in the system I feel we need to pursue a rebate or sewer credit program. This is a draft or working outline of a proposal:

- We make all future new construction “on demand” first.
- We offer 50% credit up to \$40 for inspections per address once every 24 months (maybe more 36-48 depending on recommendations by committee)
- We offer 40% rebate credit up to \$400 per replacement of timed unit with a demand unit and we limit the amount total annually (i.e. \$20,000 annual starting in 2021).
- They provide proof of purchase, replacement of old timed unit and completion of new install.
- We approve the install credit similar to unpolluted water credits at MSC (inspection rebates can be done in office).
- Eventually we make it regulatory that all softeners (new construction and replacement) are on-demand as this program ends in 3, 4 or 5 years.

If the utility user is income limited there is likely more that is needed in their home and we have some funds through the Housing Fund or other housing programs to assist. I do not want to mix this up as anything other than a separate program to reduce chloride at the WWTP regardless of applicant.

Sidewalk Program

Simply put we have more sidewalk than money identified. We were going to proceed with 2020-21 schedule for the sidewalks along West Main and Maple Street. We also looked at Cherry and Almeron as well. The costs are considerable and with COVID 19, person to person discussion about sidewalks and public hearings are not advised at the moment. The City Engineer will provide some cost estimates at the meeting. This project is possible but may take 3 years. The City could do those sections that are City responsibility and maybe Bader Drive first in 2020, and then go forward with notice and hearings for 2021-22 with the multiple properties. I am certain there are a few other City properties or sections that could use some paths, curb ramps or other work.

MATCH LINE A

N PRENTICE ST

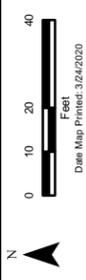
S PRENTICE ST

N FOURTH ST

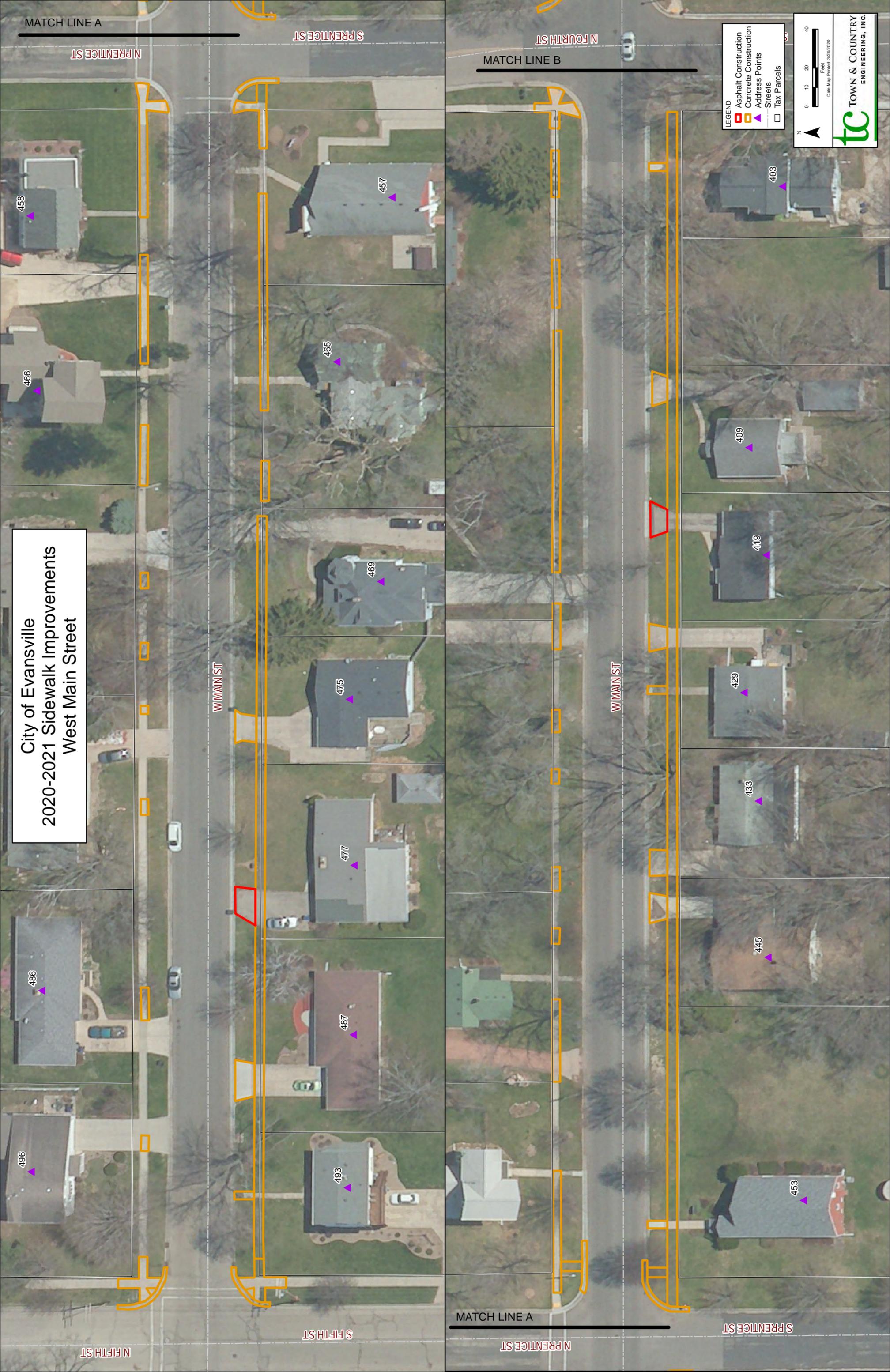
MATCH LINE B

LEGEND

- ▭ Asphalt Construction
- ▭ Concrete Construction
- ▲ Address Points
- Streets
- ▭ Tax Parcels



City of Evansville
2020-2021 Sidewalk Improvements
West Main Street



N FIFTH ST

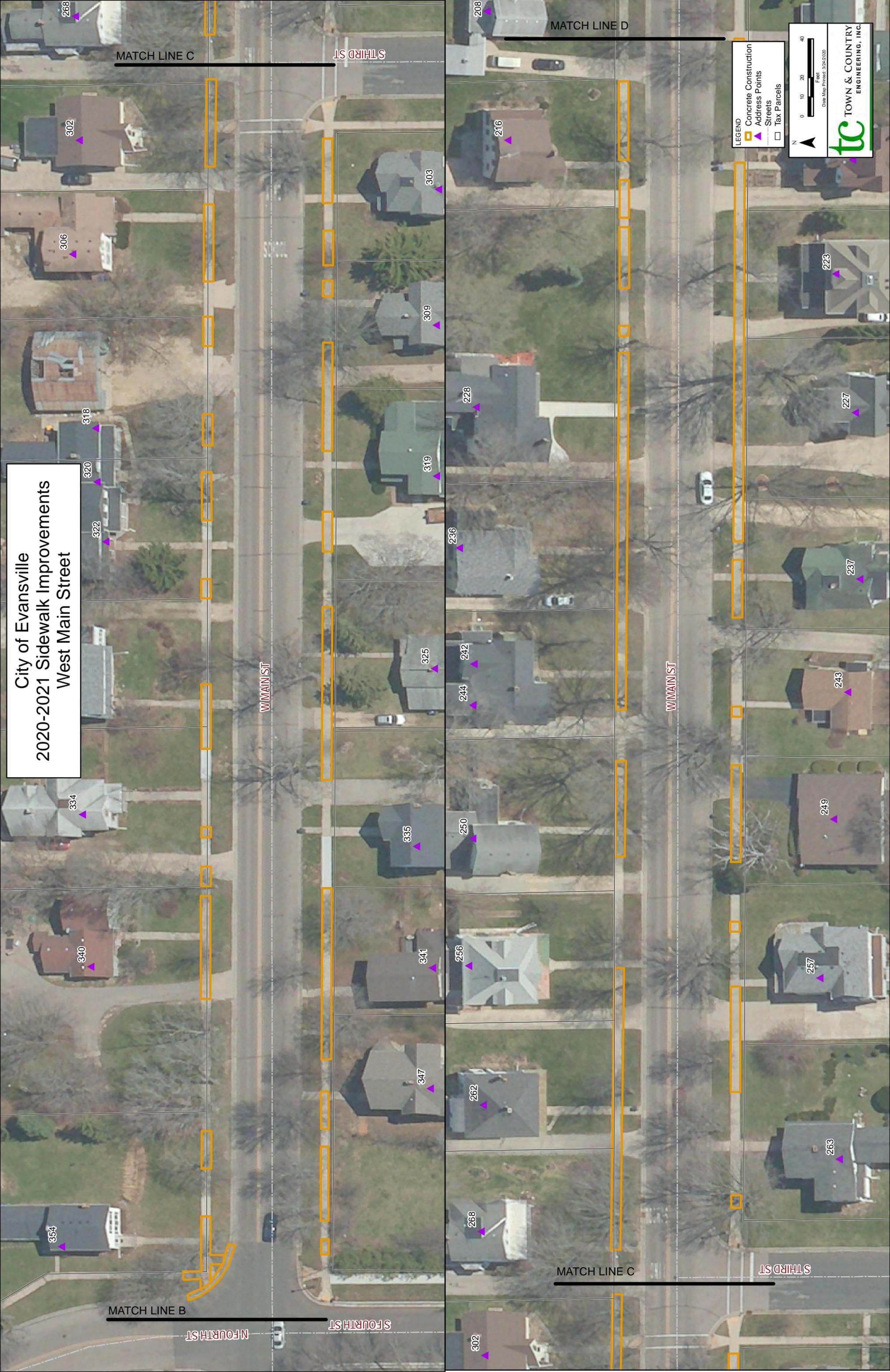
S FIFTH ST

N PRENTICE ST

S PRENTICE ST

MATCH LINE A

City of Evansville
2020-2021 Sidewalk Improvements
West Main Street



MATCH LINE C

S THIRD ST

MATCH LINE D

LEGEND

- Concrete Construction
- Address Points
- Streets
- Tax Parcels



tc TOWN & COUNTRY
ENGINEERING, INC.

Date Map Printed: 3/24/2020

W MAIN ST

W MAIN ST

MATCH LINE B

S FOURTH ST

MATCH LINE C

S THIRD ST

N FOURTH ST

302

268

262

256

250

244

236

228

309

303

208

302

263

257

249

243

237

227

223

354

340

334

322

320

318

306

302

268

City of Evansville
2020-2021 Sidewalk Improvements
West Main Street

MATCH LINE E

MATCH LINE D

MATCH LINE E

MADISON ST

N MADISON ST

E MAIN ST

W MAIN ST

W MAIN ST

N SECOND ST

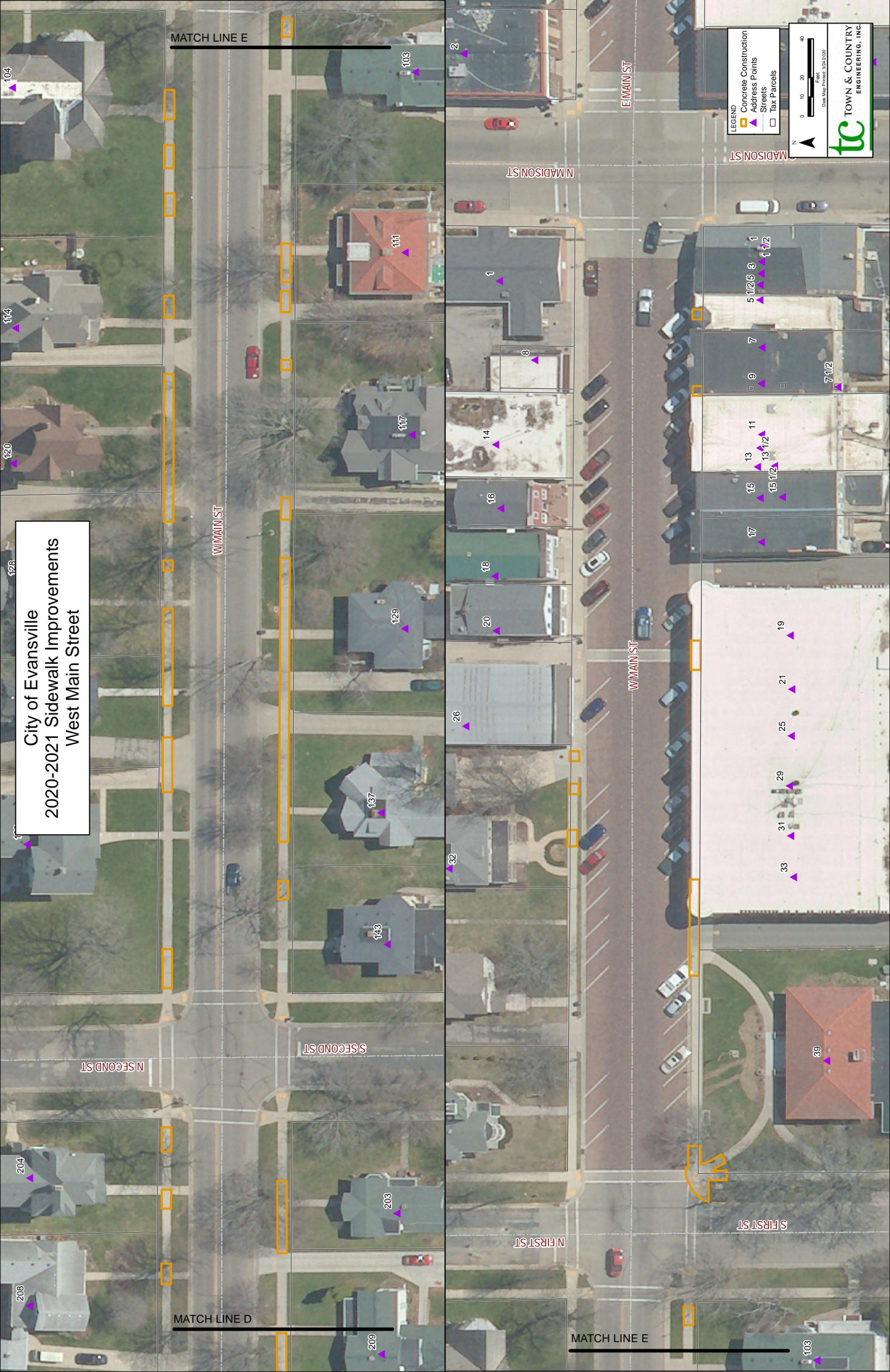
S SECOND ST

N FIRST ST

S FIRST ST

LEGEND

- Concrete Construction
- Address Points
- Streets
- Tax Parcels



City of Evansville
2020-2021 Sidewalk Improvements
Maple Street



MATCH LINE F

ELBERTY ST

WATER ST

LEGEND

- Sidewalk Grinding
- Concrete Construction
- Address Points
- Streets
- Tax Parcels

0 10 20 40 Feet
Date Map Printed: 3/24/2020

tc TOWN & COUNTRY ENGINEERING, INC.

E CHURCH ST

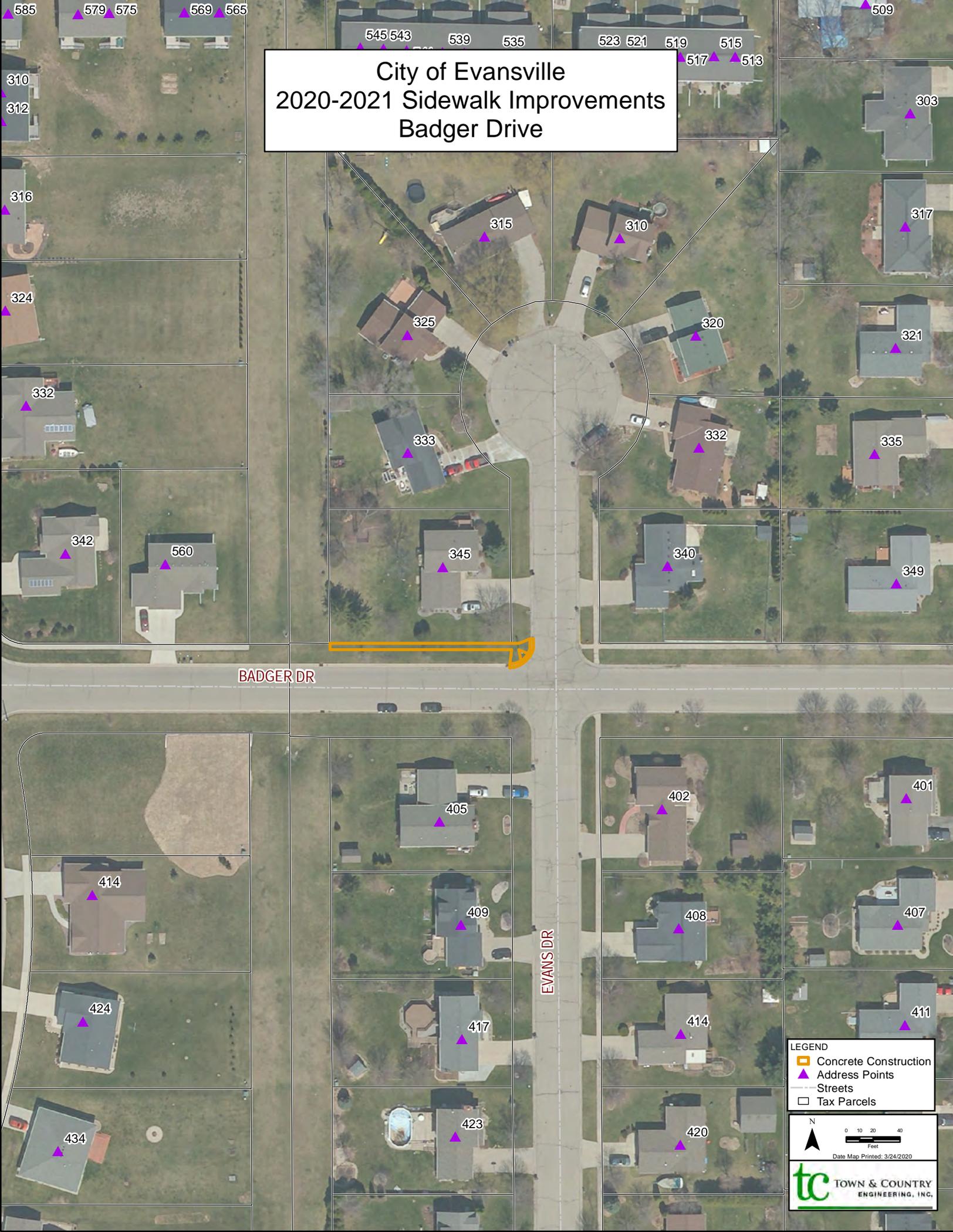
MAPLE ST

ELBERTY ST

MAPLE ST

MATCH LINE F

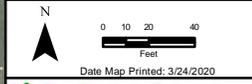
City of Evansville 2020-2021 Sidewalk Improvements Badger Drive



BADGER DR

EVANS DR

- LEGEND
- Concrete Construction
 - Address Points
 - Streets
 - Tax Parcels



Date Map Printed: 3/24/2020

tc TOWN & COUNTRY ENGINEERING, INC.

From: [Cory Neeley](#)
To: [Jim Brooks \(james.a.brooks@charter.net\)](#); ["ian.rigg@ci.evansville.wi.gov"](#); [Chad Renly](#)
Cc: [Donna Hammett](#); [Kim Dienberg](#); [Leah Hurlley](#); ["Ben Ladick"](#); [jon.senn@ci.evansville.wi.gov](#)
Subject: ESR Report
Date: Friday, April 24, 2020 3:44:59 PM
Attachments: [BCPL Loan Program Summary.pdf](#)

- I have been monitoring the energy usage at our largest energy users in town. There are a few accounts that have surprising numbers and end up being higher than I anticipated. I will chime in on Tuesday during the meeting with an update on the 8 week usage pattern for our largest users.
- We continue to receive solar installation applications. We have had three applications for service in the past two months.
- We rolled out the Energy Star appliance forms in March and have seen some applications come in already.
- WPPI is offering a training via Esource for Municipal communications during the Covid Crisis next Tuesday.

Crisis Communications Webinar: How Can Public Power Shine during COVID-19?

Featuring speakers from E Source

Tuesday, April 28

11:00 am – 12:00 pm

[Click Here to Register](#)

- I have been in contact with local Economic development staff about the loan programs available to customers. The Federal dollars went quickly and according to the Chamber, if any Evansville customers received the Federal dollars.
- If Non-payment by customers due to the Crisis creates liquidity issues for the Utility, we have a few options. One is the Member loan program, which recently has been amended (temporarily) to allow for members to use the loan for liquidity. Also, the attached document includes information on the Board of Commissioners of Public Lands State Trust Fund Loan Program. The goal of this is “provide municipal governments with additional utility liquidity as may be needed to remain solvent and continue operations during this crisis.”

See you all on Tuesday and have a great weekend.

Thanks,

Cory Neeley CEM
Energy Services Representative
Serving Brodhead, Evansville, Waterloo and Stoughton

WPPI Energy
1425 Corporate Center Dr.
Sun Prairie, WI 53590
608-825-1755
cneeley@wppienergy.org
www.wppienergy.org

Board of Commissioners of Public Lands (BCPL)

State Trust Fund Loan Program

Goal: During the period of the COVID-19 health crisis, the Governor’s Emergency Order #11 and related Public Service Commission order suspending utility customer disconnections and allowing for deferred payment agreements (electric, water and natural gas), municipal utilities are at risk of substantial reductions in operating revenues without corresponding reductions in utility expenses. Our goal is to provide municipal governments with additional utility liquidity as may be needed to remain solvent and continue operations during this crisis. The proposed solution utilizes the existing BCPL State Trust Fund loan program currently available to municipal governments, with program modifications as appropriate to ensure: (1) sufficient funds may be borrowed as needed to continue the Essential Government Function of municipal utility service; (2) a lending process that is consistent with borrower obligations under existing debt covenants; (3) execution of loan documents and delivery of proceeds in a timeframe that meets BCPL needs and borrowers’ needs.

Current Program:

Proposed Modified Terms:

1.	<u>Loan Types:</u> Municipal Utility Revenue Loan or Municipal General Obligation Loan	Ability to borrow on modified terms described below for period of COVID-19 crisis plus 1 year (Crisis Term)
2.	<u>Draw of Proceeds:</u> Earliest - 7/10 days after loan approval and execution; Latest - 4 months after loan approval and execution. Appears to be one-time draw.	Effective “line of credit” loan to cover revenue uncertainty; flexibility in timing of a single draw of funds up to the principal amount of the loan (within 4 months of loan execution).
3.	<u>Interest Rates:</u> Market-based rates. GO: 2.5% fixed for 2-5 year loan. Rates for revenue loans are higher to reflect risk. 60 Day rate lock upon application. Current interest statutory floor of 2%.	Consider reduced interest rates at or below current statutory floor of 2%, reflecting lender acknowledgment of necessity of loans issued during Crisis Term to provide utility liquidity (See Wis. Stats. § 24.63(3))
4.	<u>Loan Term:</u> Revenue: Up to 30 years. GO: Up to 20 years	
5.	<u>Loan Purpose:</u> Financing or refinancing any “public purpose project”	Ensure “public purpose project” definition includes payment of operating expenses during Crisis Term (See Wis. Stats. §§ 24.60(2m)(a); 24.61(3)(a)2; 67.04(1)(ar) and (2)(a); 67.12(12))
6.	<u>Debt Structure for Revenue Loan:</u> pledge and first priority assignment of revenues generated by “project being funded”. Senior position with all other secured debt subordinated	In order to accommodate existing utility debt covenants, it is necessary to consider subordination to all other secured debt (See Wis. Stats. § 24.66(1)(cg))
7.	<u>Timing:</u> 30-60 days from municipal approval and submitted loan application	Timing: best efforts <30 days
8.	<u>Repayment Schedule:</u> Annual payments due each March 15	In order to accommodate existing utility debt covenants, give BCPL discretion to sync repayment date where necessary with payment dates of existing revenue debt (See Wis. Stats § 24.70(4))
9.	<u>Early Repayment:</u> Allowed between January 1 and September 1 annually; no prepayment penalty or fees	In order to accommodate existing utility debt covenants, give BCPL discretion to sync early repayment dates where necessary with payment dates of existing revenue debt (See Wis. Stats § 24.70(4))
10.	<u>Loan Amount:</u> TBD	Consider exempting Crisis Term loans from municipal borrowing limits to the extent possible given constitutional limitations (See for example Wis. Stat §§ 24.63(1), (2s) and (5); 67.03)

Note: Proposed modified terms requiring statutory changes highlighted in yellow