



## MEETING AGENDA – NOVEMBER 27, 2018

BOARD ROOM  
4000 EAST RIVER ROAD NE  
ROCHESTER, MN 55906

4:00 PM

### **Call to Order**

- 1. Approval of Agenda**
- 2. Safety Moment**
- 3. Approval of Minutes**

1. Public Utility Board - Special Meeting - Nov 20, 2018 4:00 PM

- 4. Approval of Accounts Payable**

1. a/p board listing

### **NEW BUSINESS**

### **Open Comment Period**

*(This agenda section is for the purpose of allowing citizens to address the Utility Board. Comments are limited to 4 minutes, total comment period limited to 15 minutes. Any speakers not having the opportunity to be heard will be the first to present at the next Board meeting.)*

- 5. Regular Agenda**

1. Macro Site Lease

Resolution: Macro Site Lease

2. Master Small Cell Wireless Collocation Agreement

Resolution: Master Small Cell Wireless Collocation Agreement

- 6. Board Liaison Reports**

1. RPU Index of Board Policies

- 7. General Managers Report**

- 8. Division Reports & Metrics**

- 9. Other Business**

- 10. Adjourn**

*The agenda and board packet for Utility Board meetings are available on-line at [www.rpu.org](http://www.rpu.org) and <http://rochestercitymn.iqm2.com/Citizens/Default.aspx>*



## MEETING MINUTES – NOVEMBER 20, 2018

COMMUNITY ROOM  
4000 EAST RIVER ROAD NE  
ROCHESTER, MN 55906

4:00 PM

**Call to Order**

Attendee Name	Title	Status	Arrived
Mark Browning	Board Member	Present	
Tim Haskin	Board Member	Present	
Melissa Graner Johnson	Board Vice President	Present	
Brian Morgan	Board President	Present	
Michael Wojcik	Board Member	Absent	

**1. Approval of Agenda**

1. **Motion to:** approve the agenda as presented

*During the discussion, President Morgan added a Safety Moment to the agenda. He spoke about taking extra caution when walking on ice during winter weather to avoid slips and trips.*

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Mark Browning, Board Member
<b>SECONDER:</b>	Melissa Graner Johnson, Board Vice President
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

**2. Approval of Minutes**

1. Public Utility Board - Regular Meeting - Sep 25, 2018 4:00 PM
2. **Motion to:** approve the Minutes of September 25, 2018 as presented

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Tim Haskin, Board Member
<b>SECONDER:</b>	Melissa Graner Johnson, Board Vice President
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

3. Public Utility Board - Regular Meeting - Oct 30, 2018 4:00 PM
4. **Motion to:** approve the Minutes of October 30, 2018 as presented

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Melissa Graner Johnson, Board Vice President
<b>SECONDER:</b>	Mark Browning, Board Member
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

**NEW BUSINESS****Open Comment Period**

Minutes Acceptance: Minutes of Nov 20, 2018 4:00 PM (Approval of Minutes)

*(This agenda section is for the purpose of allowing citizens to address the Utility Board. Comments are limited to 4 minutes, total comment period limited to 15 minutes. Any speakers not having the opportunity to be heard will be the first to present at the next Board meeting.)*

President Morgan opened the meeting for public comment. One person came forward to speak.

Ivan Idso, of Rochester, invited the RPU Board and staff to attend a showing of the film "Living in the Future's Past" to be presented on December 6 at the Rochester Civic Theater Company as a fundraiser for Rochester Earth Fest.

### 3. Regular Agenda

#### 1. 2019 Water Utility Rate Adjustment

*Director of Corporate Service Peter Hogan presented the proposed 2019 Water Utility rate adjustment to the Board for approval. A six percent rate increase is proposed for 2019, based on a 2015 cost of service study, the utility method of rate setting, and to align with the requirements of the City of Rochester Home Rule Charter. The Board finance committee reviewed the 2019 water utility budget including the six percent increase on October 18, 2018, and it was presented to the full Board at the October 30, 2018, when Board members approved a motion to advertise the proposed rate increase in the newspaper of record to allow for public input. General Manager Mark Kotschevar said that RPU received no communication from the public in regard to the increase.*

*Mr. Hogan stated that the increase is needed to cover such costs as normal growth and replacement of infrastructure, and the impact on the average residential customer using 6.4 CCF (centum cubic feet) of water monthly would be an increase of \$0.76 per month, which could be offset by the conservation of one CCF per month in most cases.*

*Additionally, the 2019 water utility tariffs and fee schedules were modified to include opt-out language for automated meter reading.*

*Board Member Mark Browning asked if the customer charge for the water utility follows the same design as the electric utility, and Mr. Hogan stated it does.*

Resolution: Approval of the 2019 Water Utility Rate Adjustment

*BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve an overall general rate increase for 2019 of 6.0% according to the attached tariff effective on or about January 1, 2019.*

*BE IT FURTHER RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve an overall 6.0% water utility rate increase according to the attached tariff effective on or about January 1, 2019*

*Passed by the Public Utility Board of the City of Rochester, Minnesota, this 20th day of November, 2018.*

<b>RESULT:</b>	<b>COUNCIL APPROVAL [UNANIMOUS]</b>
<b>MOVER:</b>	Melissa Graner Johnson, Board Vice President
<b>SECONDER:</b>	Mark Browning, Board Member
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

2. 2019 Water Utility Budget

*Next the Board was asked to approve the 2019 water utility budget, which incorporates the six percent general rate increase. The budget was initially presented to the board finance committee on October 18, 2018 for review, and to the full Board at the October 30, 2018 meeting. Mr. Hogan stated the proposed budget supports the need for continued investment in infrastructure growth and replacement, and to fund reserves for maintenance and replacement in future years.*

*Board Member Mark Browning asked if infrastructure replacement due to DMC-related expansion in the downtown area is needed, would RPU ask the DMC to fund any rework? Mr. Hogan said that if new infrastructure was torn up as part of the DMC construction, RPU would request funding to cover costs, and staff has been flagging specific areas in the downtown area. Any such funding requests would be coordinated through Public Works, he said. Mr. Browning stated he did not want the Board to lose sight of that.*

*Following approval of the 2019 water utility budget by the RPU Board, the budget will be presented to the Rochester City Council for approval at its December 3, 2018 meeting.*

Resolution: Approval of the 2019 Water Utility Budget

*BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the*

*2019 water utility capital and operating budgets as submitted*

*BE IT FURTHER RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve the*

*2019 water utility capital and operating budgets.*

*Passed by the Public Utility Board of the City of Rochester, Minnesota, this 20th day of November, 2018.*

<b>RESULT:</b>	<b>COUNCIL APPROVAL [UNANIMOUS]</b>
<b>MOVER:</b>	Melissa Graner Johnson, Board Vice President
<b>SECONDER:</b>	Mark Browning, Board Member
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

3. 2019/2020 Electric Utility Rate Adjustment

*The electric utility rate adjustment for 2019-2020 was presented to the Board for approval, with a proposed overall general rate increase of 1.9% for 2019 and 2.5% for 2020. The proposed increases are based on an electric utility cost of*

service study conducted in 2017. The proposed rates were initially advertised in the newspaper of record for public comment in September 2017 and posted on the RPU website. On October 18, 2018, the electric utility budget with the proposed rate increase was reviewed by the Board's finance committee, and was reviewed by the full Board on October 30, 2018, when the Board gave preliminary consensus and approved providing public notice in the newspaper of record and on the RPU website.

Director of Corporate Services Peter Hogan stated the average residential customer using 600 kilowatt hours per month would see an increase of \$1.46 per month. He asked the Board to determine what the customer charge and the energy charge will be for the residential class for 2019-2020. The customer charge is currently \$19.50 per month, with \$20.50 per month proposed for 2019, and \$21.60 per month proposed for 2020, however, some of that cost could be shifted to the energy charge.

Additionally, the 2019 electric utility tariffs and fee schedules were modified to include opt-out language for automated meter reading.

President Morgan suggested a motion to approve the 1.9% electric utility rate increase for 2019 only (not including the increase for 2020); this was moved by Board Member Tim Haskin and seconded by Vice President Johnson.

President Morgan shared some comments from Board Member Michael Wojcik, who was absent from the meeting. Mr. Wojcik asked the Board to consider tabling any customer charge increase until after January 2019 when a new Board will be in place, asking to hold flat for now or to decrease the charge.

Board Member Mark Browning asked how Rochester Public Works addresses their customer charge for wastewater rates. Using a cost of service study, General Manager Mark Kotschevar said that Public Works proposed an increase from a \$15 wastewater customer charge in 2016, to an increase of \$19 in 2019, which was approved by the Rochester City Council. RPU's rate structures are currently in line with the rate structures of Public Works, he said.

Mr. Browning asked why the rates for LED lighting in the City street lighting rate schedules are twice as high as all other light sources - to which Mr. Kotschevar replied that since LED's use less kilowatt hours, the rate needs to be increased to recover the same expenses.

Mr. Haskin stated that after receiving his own property tax bill for the new year, the thought occurred to him that rate payers have been very vocal about the customer charges but not the kilowatt hour charges. He said he is inclined to hold fast to the current customer charge until after January.

*Mr. Browning pointed out that the utility has taken measures to build its cash reserves to return to good financial health, and that gradual incremental rate increases are a better option than delaying an increase only to raise rates sharply later.*

*President Morgan said he is in favor of tiering the inclining block rate customer charge for the low-income users. Mr. Browning advised against varying too much from the standard cost of service rate track, given that the City Council already approved the Public Works model. Mr. Kotschevar stated that the impact to the low user residential customer is only a difference of \$0.30 per month. Additionally, Mr. Kotschevar anticipates an additional rate decrease from SMMPA in 2020, which will lower the power cost adjustment. Vice President Johnson indicated that it may be beneficial to wait on the 2020 rate discussion until January 2019 when new Board member(s) will join the Board.*

*Mr. Haskin restated the motion on the table to approve a 1.9% universal electric utility rate increase for 2019 per the cost of service study only, not including the customer charge.*

<b>RESULT:</b>	<b>COUNCIL APPROVAL [UNANIMOUS]</b>
<b>MOVER:</b>	Tim Haskin, Board Member
<b>SECONDER:</b>	Melissa Graner Johnson, Board Vice President
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

Resolution: Approval of the 2019/2020 Electric Utility Rate Adjustment

*BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve an overall electric utility general rate increase of 1.9% for 2019 according to the attached rate schedules and tariffs, effective on or about January 1, 2019.*

*BE IT FURTHER RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve the electric utility rate schedules and tariffs, to take effect on or about January 1, 2019.*

*Passed by the Public Utility Board of the City of Rochester, Minnesota, this 20<sup>th</sup> day of November 2018.*

*Mr. Browning moved to approve the residential customer charge at \$20.50 per month per staff recommendation.*

<b>RESULT:</b>	<b>REJECTED [1 TO 3]</b>
<b>MOVER:</b>	Mark Browning, Board Member
<b>SECONDER:</b>	Tim Haskin, Board Member
<b>AYES:</b>	Mark Browning
<b>NAYS:</b>	Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

Mr. Haskin stated that the components of the fixed customer charge and its methodology are disagreed upon in the industry as to what is or is not included. Vice President



Johnson said she did not see any harm in holding the customer charge discussion for one year. Mr. Browning indicated that much discussion has passed, and future discussions should focus on time-of-use rates.

With no change to the current \$19.50 customer charge, Mr. Hogan advised that the 1.9% increase will be applied to the energy charge. The electric rate tariffs will be updated accordingly, and a new 2019 electric utility rate adjustment resolution will be drafted.

4. 2019 Electric Utility Budget

*The Board was asked to approve the 2019 electric utility budget, which includes the proposed overall electric rate increase of 1.9%. The initial budget was reviewed by the Board's finance committee on October 18, 2018, and by the full Board on October 30, 2018. Director of Corporate Service Peter Hogan stated that the budget as presented reflects a reduction of approximately \$2.78 million in operating and capital expenses from staff's original submissions in order to meet the 2017 cost of service study recommendations.*

*Following approval by the Board, the 2019 RPU electric utility budget will appear on the agenda for approval by the Rochester City Council at its December 3, 2018 meeting.*

Resolution: Approval of the 2019 Electric Utility Budget

*BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the*

*2019 electric utility capital and operating budgets as submitted*

*BE IT FURTHER RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve the*

*2019 electric utility capital and operating budgets.*

*Passed by the Public Utility Board of the City of Rochester, Minnesota, this 20th day of November, 2018.*

<b>RESULT:</b>	<b>COUNCIL APPROVAL [UNANIMOUS]</b>
<b>MOVER:</b>	Melissa Graner Johnson, Board Vice President
<b>SECONDER:</b>	Tim Haskin, Board Member
<b>AYES:</b>	Mark Browning, Tim Haskin, Melissa Graner Johnson, Brian Morgan
<b>ABSENT:</b>	Michael Wojcik

4. Adjourn

*The agenda and board packet for Utility Board meetings are available on-line at [www.rpu.org](http://www.rpu.org) and <http://rochestercitymn.ig2.com/Citizens/Default.aspx>*

Submitted by:

\_\_\_\_\_  
Secretary

Approved by the Board

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Minutes Acceptance: Minutes of Nov 20, 2018 4:00 PM (Approval of Minutes)

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Special Meeting

Tuesday, November 20, 2018

4:00 PM

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Board President

\_\_\_\_\_

Date

Minutes Acceptance: Minutes of Nov 20, 2018 4:00 PM (Approval of Minutes)



# ACCOUNTS PAYABLE

Meeting Date: 11/27/2018

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**SUBJECT: a/p board listing**

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**PREPARED BY: Terri Engle**

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Please approve

**ROCHESTER PUBLIC UTILITIES**  
**A/P Board Listing By Dollar Range**  
For 10/10/2018 To 11/08/2018  
**Consolidated & Summarized Below 1,000**

**Greater than 50,000 :**

1			
2			
3	SOUTHERN MN MUNICIPAL POWER A	October SMMPA Bill	7,215,569.55
3	MN DEPT OF REVENUE	September Sales and Use Tax	873,120.93
4	KNUTSON CONSTRUCTION SERVICES	Service Center Expansion Labor	249,909.00
5	CONSTELLATION NEWENERGY-GAS D	September Gas for Cascade Creek	197,263.71
6	MASTEC NORTH AMERICA INC	5-Manhole Rebuilds	196,517.97
7	CONSTELLATION NEWENERGY-GAS D	September Gas for SLP	182,774.60
8	ePLUS GROUP INC.	EMS Cisco Hardware and Software	138,640.25
9	CONSTELLATION NEWENERGY-GAS D	September Gas for WES	132,522.41
10	A & A ELECT & UNDERGROUND CON	Directional Boring and Related Services	109,103.00
11	ASPLUNDH TREE EXPERT CO INC (	703C line clearance~	55,583.55
12	BILLTRUST dba	16-18 CC/Billing/Mailing/IVR Services	50,274.48
13			
14		<b>Price Range Total:</b>	<b>9,401,279.45</b>
15			

**5,000 to 50,000 :**

16			
17			
18	ABB INC. PAYMENT	6-Bushing, ABB, O+C, 138KV, PAUWELS TRANSF	44,670.00
19	U S ALLIANCE GROUP	Credit Card Processing Fees - CardFlex	40,802.55
20	TECHIBUS INC	Cascade Creek T1 bus duct repair	40,746.00
21	MN MUNICIPAL UTILITIES ASSN C	Safety Mgmt Prog/Job Trng & Safety 10/18	38,200.00
22	WRIGHT TREE SERVICE INC	2018 Hourly Tree Trimming~	34,458.68
23	BLUESPIRE STRATEGIC MARKETING	2016 - 2019 RPU Plugged In Contract	29,089.00
24	VISION COMPANIES LLC (P)	Ldrshp Jmy 100&200, Leads, Offsite Facil & Expens, Strat Devl.	29,025.00
25	RSP ARCHITECTS LTD.	Service Center Expansion Project	27,542.00
26	PEOPLES ENERGY COOPERATIVE (P	October 2018 Compensable	26,457.36
27	WESTSIDE ENERGY PARTNERS	Westside Energy Station EPC	26,029.96
28	HUNT ELECTRIC CORP	Project Electrician Substation Mntce	25,374.97
29	SPARTA CONSULTING INC	2017-18 SAP Application Support~	25,280.00
30	RESCO	2-Switch, PM, Air, 3PH, 2-600SW/2-200F PSE	25,132.00
31	THE ENERGY AUTHORITY INC	September TEA Resource Fee	22,076.26
32	BENIKE CONSTRUCTION (P)	Haz mat building improvements	20,500.00
33	DAKOTA SUPPLY GROUP	60-Luminaire, 108W LED, PC 120-277V, Gray	18,339.75
34	VIKING ELECTRIC SUPPLY INC	5,000 ft-Conduit, HDPE, 4.00, Empty, SDR 13.5	17,352.96
35	ALL SYSTEMS INSTALLATION dba	Fiber splice project, Bamber - Willow Cr	16,830.00
36	WESCO DISTRIBUTION INC	1,000 - Photocontrol, 120V-305V	15,101.44
37	WORKS COMPUTING INC	Site Recovery Mgr Services Vcenter	14,344.40
38	EPLUS TECHNOLOGY INC	Phone system Software upgrade Services	14,267.81
39	CRESCENT ELECTRIC SUPPLY CO	6,000 ft-Wire, AL, 600V, 350-4/0 NEU YS Tri Urd	14,112.00
40	MINNESOTA ENERGY RESOURCES CO	September Gas for WES	14,031.51
41	ALL SYSTEMS INSTALLATION dba	S2 License 3-year renewal	13,923.68
42	CENTURYLINK	2018 Monthly Telecommunications	13,539.81
43	CRESCENT ELECTRIC SUPPLY CO	5,320 ft-Conduit, PVC Sch 40, 5.00, 20' length	12,512.64
44	McGRANN SHEA CARNIVAL STRAUGH	2018 Retainer 3rd Quarter	12,500.00
45	STUART C IRBY CO INC	1-Trans, PM, 3ph, 500kVA, 13.8/8, 480/277	12,365.00
46	USIC LOCATING SERVICES INC	2018 Locating Services	12,344.64
47	EDELMANN & ASSOCIATES INC	Dirty condensate pump and driver	10,607.16
48	READY MIX CONCRETE COMPANY LL	4th Str and 1st Ave SW Concrete & Pump	10,587.15
49	MARSDEN BLDG MAINT LLC dba	Bldg Cleaning	10,022.18
50	ULTEIG ENGINEERS INC	Engineering Svrs Cascade Creek Bus Duct	9,577.50
51	CREDIT MANAGEMENT LP	2018 Collections/Delinquent Services	9,269.73
52	ALL SYSTEMS INSTALLATION dba	Low Voltage SC Expansion Contract	9,157.65
53	JIM WHITING NURSERY/GARDEN CT	hydroseeding 25th St SW / TK	9,055.00
54	SPECTRUM REACH	118-909 CustSrvc-Oper-Infrml_InstrcAdvrt	8,669.00
55	CPMI INC	Service Center Project	8,580.00
56	STUART C IRBY CO INC	6-Trans, PM, 1ph, 37.5kVA, 13.8/8, 240/120	8,520.00
57	ONLINE INFORMATION SERVICES I	2018 Utility Exchange Report	8,242.97
58	BORDER STATES ELECTRIC SUPPLY	1-Capacitor Bank 600 kVar, Switched Comp.	7,653.00
59	READY MIX CONCRETE COMPANY LL	Structural/thermal fill around duct bank	7,422.48

Attachment: AP Board CrMo (9802 : a/p board listing)

**ROCHESTER PUBLIC UTILITIES**  
**A/P Board Listing By Dollar Range**  
For 10/10/2018 To 11/08/2018  
**Consolidated & Summarized Below 1,000**

60	MIDCONTINENT ISO INC	October MISO Billing	7,380.65
61	INSTITUTE FOR ENVIRONMENTAL	Manhole sampling	6,702.21
62	ADVANTAGE DIST LLC (P)	5,000 gal-Urea 32, WES	6,465.94
63	TWIN CITY SECURITY INC	2018 Security Services	6,391.61
64	STUART C IRBY CO INC	3-Trans, PM, 1ph, 75kVA, 13.8/8, 240/120	5,997.00
65	STUART C IRBY CO INC	5-Trans, OH, 1ph, 37.5kVA,13.8/8,120/240	5,940.00
66	VERIZON WIRELESS	2018 Cell & Ipad Monthly Service	5,836.01
67	READY MIX CONCRETE COMPANY LL	4th Street SW Duct Bank, 4th to 6th Ave_	5,822.55
68	EPLUS TECHNOLOGY INC	2018 Network maintenance services	5,777.00
69	ALL SYSTEMS INSTALLATION dba	Data closet equipment install	5,509.00
70	CITY OF ROCHESTER	USGS Gauging Station	5,500.00
71	ULTEIG ENGINEERS INC	Cascade Creek Sub Transformer Replace	5,485.00
72	JIM WHITING NURSERY/GARDEN CT	16-Trees planted-restoration for 25th St SW & Broadway	5,439.84
73	THE ENERGY AUTHORITY INC	September Sales to TEA	5,367.52
74	EXPRESS SERVICES INC	2018 Seasonal staff facilities	5,358.00
75	BORDER STATES ELECTRIC SUPPLY	120-Meter, FM2S CL200 240V AMR	5,219.78
76	MAVO SYSTEMS INC (P)	Asbestos abatement Service Center	5,213.65
77	STUART C IRBY CO INC	420-Bulb, 100W, HPS	5,206.95
78	EPLUS TECHNOLOGY INC	Informacast Paging System License	5,186.59
79	BARR ENGINEERING COMPANY (P)	Roch Groundwater Model Update	5,018.50
80	BRADLEY LAW LLC	Pole Attachment Consultant	5,000.00
81			
82		<b>Price Range Total:</b>	894,131.04
83			
84	<b><u>1,000 to 5,000 :</u></b>		
85			
86	READY MIX CONCRETE COMPANY LL	4th Str SW Duct bank installation	4,702.50
87	XYLO TECHNOLOGIES INC	2018 IT Helpdesk Support	4,680.00
88	GDS ASSOCIATES INC	MISO Attch O Consulting Service	4,644.08
89	VIKING ELECTRIC SUPPLY INC	2,280 ft-Conduit, PVC Sch 40, 4.00	4,506.88
90	EPLUS TECHNOLOGY INC	ADDON LICENSE ONLY	4,468.44
91	NEW LINE MECHANICAL	2-Natural Gas Heaters for Hazard Waste Bldg	4,450.00
92	WESCO DISTRIBUTION INC	7,500-Conduit, HDPE, 1.50, Empty, Orange	4,372.50
93	RESCO	16-Cutout Door, 50A ELF, 15KV	4,290.88
94	SORENSEN & SORENSEN PAINTING	Transformer - Substation repaint	4,290.00
95	EGAN COMPANY	Westside Instrument Air Disconnects	4,103.41
96	MINNESOTA ENERGY RESOURCES CO	September Gas for SLP	4,075.18
97	SOMA CONSTRUCTION INC	Crushed concrete for excavation backfill for water main breaks	4,010.08
98	CHOSEN VALLEY TESTING	Serv Ctr Special Inspec and Testing Services	3,953.00
99	IDEXX DISTRIBUTION CORP	4 cases-ColiIert, 100ml	3,934.24
100	GEXPRO (P) DBA REXEL USA INC.	Replacement Trip Unit Service center switch gear	3,835.00
101	STUART C IRBY CO INC	48-Cutout, 15KV, 100A, NLB, Poly	3,739.20
102	ADVANTAGE DIST LLC (P)	55 gal-Oil, Syn., Mobil Jet 254,	3,734.96
103	NEENAH FOUNDRY COMPANY	3-Manhole Cover w/Ring, 38.0"	3,658.33
104	ALL SYSTEMS INSTALLATION dba	Valcom one-way speakers (6)	3,579.00
105	SCHALLER TONY	Customer Refunds 300000539683-due to overpayment	3,550.00
106	IHEART MEDIA dba	Tips From Tony	3,519.00
107	ALTEC INDUSTRIES INC	platform / DL	3,483.32
108	YETLEY JASON	Customer Refunds 300000525589-storm water credit	3,468.82
109	STUART C IRBY CO INC	5-Trans, OH, 1ph, 10kVA, 13.8/8, 120/240	3,425.00
110	MAVO SYSTEMS INC (P)	Merrihills Well #73 - Remove asbestos sh	3,325.00
111	MINNESOTA ENERGY RESOURCES CO	September Gas at Cascade Creek	3,309.73
112	POMPEII PAINTING INC	Paint 18-141 RPU Well House	3,290.00
113	BANKS JOSHUA C	Online delivery of photos & video	3,270.00
114	QUANTITATIVE MARKET INTELLIGE	2018 Qtlly Customer Satisfaction Survey	3,206.25
115	GDS ASSOCIATES INC	Developing OSHA clearance drawings	3,180.00
116	GDS ASSOCIATES INC	Nerc Gap Analysis	3,134.57
117	ALL SYSTEMS INSTALLATION dba	Access control renovation/remodel	3,121.63
118	BRADLEY LAW LLC	Small cell consulting servicves	2,975.00
119	INNER TITE CORP	200-Meter Locking Ring, Rhino	2,971.04
120	BARR ENGINEERING COMPANY (P)	DNR Water Supply Plan	2,901.00

**ROCHESTER PUBLIC UTILITIES**  
**A/P Board Listing By Dollar Range**  
For 10/10/2018 To 11/08/2018  
**Consolidated & Summarized Below 1,000**

121	CLAREY'S SAFETY EQUIPMENT dba	Self retracting lifeline	2,900.00
122	BORDER STATES ELECTRIC SUPPLY	120-Elbow, 15kV, 200A, LB,1/0 Sol,175-220Mil	2,886.00
123	AIRGAS SAFETY INC (P)	Portable gas detector	2,861.59
124	McGRANN SHEA CARNIVAL STRAUGH	Service Territory	2,835.00
125	EPLUS TECHNOLOGY INC	Changes to outage IVR script	2,795.00
126	CRESCENT ELECTRIC SUPPLY CO	8,000 ft-Wire, Copper, 600V, 12-2 Solid w/Grd, UF	2,765.08
127	MN UNCLAIMED PROPERTY DIVISIO	2018 MN UNCLAIMED CRAS	2,743.85
128	ON SITE SANITATION INC	2018 Toilet Rental Services	2,627.08
129	RSP ARCHITECTS LTD.	Office Standards Design	2,621.00
130	ADVANCED DISPOSAL SVC SOLID W	2018 Waste removal SC	2,558.39
131	MOTOROLA INC	1-Radio, Vehicle, APX 1500 Pkg WES	2,447.25
132	BORDER STATES ELECTRIC SUPPLY	10-Grd Sleeve, 3ph Sect. Encl, 18 x 67 x 23	2,420.00
133	NETWORKFLEET INC	2018 Monthly Charge - GPS Fleet Tracking	2,413.35
134	BORDER STATES ELECTRIC SUPPLY	1-Transfer switch	2,395.06
135	BOB THE BUG MAN LLC	Water site Fall bug spraying	2,340.00
136	JOHNSON PRINTING CO INC	Brochure Cold Weather Rule	2,312.78
137	WESCO DISTRIBUTION INC	48-Fuse Holder, Straight Line, Breakaway	2,291.04
138	CONSOLIDATED COMMUNICATIONS d	18-20 Network and Collocation Services	2,277.42
139	D P C INDUSTRIES INC	2018 Chlorine, 150 lb Cyl	2,196.75
140	RESCO	18-Junction, LB, 200A, 4 Pos, w/Strap	2,176.74
141	WESCO DISTRIBUTION INC	12-CT, XL Window 2000/5 600V High Accuracy	2,114.84
142	ELITE CARD PAYMENT CENTER	Travel,SMonson,Conference,LasVegas,Regis	2,100.00
143	POWER SYSTEMS ENGINEERING INC	Substation Siting Study	2,086.00
144	EGAN COMPANY	Westside HVAC Light Switches	2,009.71
145	D P C INDUSTRIES INC	2018 Carus 8500 Aqua Mag F35	2,007.50
146	ENVIRONMENTAL INITIATIVE	RPU's annual membership for for Env. Ini	2,000.00
147	CD TRAINING CONSULTANTS INC	Drug & alcohol training	1,967.65
148	ATLAS COPCO COMPRESSORS LLC	2-Filter Kit, UD310+ WS Air Dryer	1,932.60
149	D P C INDUSTRIES INC	2018 Hydrofluorosilicic Acid - Delivered	1,925.13
150	BAIER GERALD	2018 Sweeping Services Jan-December	1,901.00
151	ELITE CARD PAYMENT CENTER	C3 Softworks safety software	1,821.85
152	WERNER ELECTRIC SUPPLY	760 ft-Conduit, PVC Sch 40, 5.00, 20' length	1,817.43
153	EPLUS TECHNOLOGY INC	Singlewire maintenance	1,744.73
154	BARR ENGINEERING COMPANY (P)	General Groundwater Consulting Services	1,740.50
155	ROYAL TIRE INC	replace tires	1,718.64
156	ALL SYSTEMS INSTALLATION dba	Access boxes for Douglas Trail Sub	1,715.00
157	NOVASPECT INC	Stm Trp, Yarwy, 460B SWR 600psi .750	1,682.21
158	HALLBERG ENGINEERING INC	CSC Commissioning Service	1,652.65
159	MAVO SYSTEMS INC (P)	glove bag asbestos pipe insulaiton / MH	1,640.00
160	RESCO	7-Cutout Door, 30A ELF, 15KV	1,603.00
161	JENNINGS, STROUSS & SALMON PL	Legal Fees	1,596.50
162	WESCO DISTRIBUTION INC	9-CT, XL Window 2000/5 600V High Accuracy	1,586.13
163	N HARRIS COMPUTER CORP	Cayenta Implementation Services	1,560.00
164	RESCO	50-Arrester, 10kV, Dist, Riser MOV	1,542.50
165	ZOHO CORPORATION	ManageEngine Firewall Analyzer Sub-3yrs	1,522.97
166	READY MIX CONCRETE COMPANY LL	Flow fill for excav backfill-s/b elec en	1,500.53
167	MINNESOTA CHILDRENS MUSEUM	Sponsorship	1,500.00
168	TREATMENT RESOURCES INC	Chlorination unit	1,500.00
169	CINTAS CORP	FR Uniform Services	1,496.42
170	NARDINI FIRE EQUIPMENT CO INC	Semi-annual halon system inspection at S	1,467.93
171	HILLCREST LICENSE BUREAU	New Power Resources Boat	1,455.99
172	ROCH LANDSCAPING SERVICES INC	T & D grounds restoration work	1,446.11
173	INNER TITE CORP	500-Meter Barrel Lock Insert	1,438.97
174	AIRGAS SAFETY INC (P)	Portable gas detector	1,430.80
175	CENTRAL STATES GROUP	5-Filter, After filter Element, #3032550	1,405.41
176	GEARGRID LLC	Wall mount lockers - bank of 4	1,390.00
177	WORKING PERSONS STORE	36-Face Mask, FR	1,388.18
178	CORE & MAIN LP (P)	4-Coupling,8" Romac Alpha 2-Bolt Restraint	1,308.00
179	ELITE CARD PAYMENT CENTER	Ryan Moore Training IRWA University	1,300.00
180	CITY OF ROCHESTER	WC Admin Fees Sept 2018	1,282.00
181	ALL SYSTEMS INSTALLATION dba	Card reader install - cash drawer	1,272.00

Attachment: AP Board CrMo (9802 : a/p board listing)

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For 10/10/2018 To 11/08/2018  
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182	BORDER STATES ELECTRIC SUPPLY	2-Streetlight foundation	1,270.88
183	EPLUS TECHNOLOGY INC	UC manager-10 enhanced user license	1,268.07
184	ROCH PLUMBING & HEATING CO IN	inspection and air test Willow Creek sub	1,268.00
185	WIESER PRECAST STEPS INC (P)	Grd Sleeve, Switch Basement, PME	1,250.00
186	U S A SAFETY SUPPLY	24-Vest, FR, Mesh, Lime, XL	1,226.40
187	ALL SYSTEMS INSTALLATION dba	2018 IT Services T&M	1,219.00
188	CENTRAL STATES GROUP	4-Filter, Prefilter Element, #3032566	1,188.45
189	ROCHESTER ARMORED CAR CO INC	2018 Pick Up Services	1,187.24
190	FLEETPRIDE INC	fleet parts / DL	1,180.24
191	IHEART MEDIA dba	Ads	1,164.00
192	BOLTON AND MENK (P)	AT&T SE Tower Antenna Modification~	1,155.00
193	AHN X DAM	Customer Refund CCS 30000524101 due to overpayment	1,151.00
194	STUART C IRBY CO INC	2-Vault, Fiber Optic, w/Cover 24"x36"x30"	1,140.00
195	WESCO DISTRIBUTION INC	12-Saw, FG Square Pole 1.250" x 6', 4106	1,129.88
196	UNITED RENTALS INC	Lift	1,099.83
197	WORKS COMPUTING INC	VMware Upgrade	1,080.00
198	VERTICAL LIMIT CONSTRUCTION L	Replaced bulbs	1,080.00
199	EPLUS TECHNOLOGY INC	PSS SWSS UPGRADES CCX	1,077.81
200	STUART C IRBY CO INC	2018 Rubber Goods Testing & Replacement	1,076.34
201	GEARGRID LLC	Wall mount lockers - bank of 3	1,076.00
202	K A A L TV LLC	TBenson Ads	1,075.00
203	INNER TITE CORP	500-Barrel Lock Cover Insert For Faceplate	1,058.06
204	CG HOLDINGS - BELGIUM NV	9-Bushing gasket, Rubber	1,052.10
205	EPLUS TECHNOLOGY INC	Maintenance Subscription	1,046.84
206	MILLER KATIE	Customer Refunds 300000615045 due to overpayment	1,020.60
207	ELITE CARD PAYMENT CENTER	Travel,JLenn,AWWA,Duluth,Lodging	1,014.60
208	ELITE CARD PAYMENT CENTER	Travel,NFitch,AWWA,Duluth,Lodging	1,014.60
209	EXPRESS SERVICES INC	2018 Temp Staff Finance/Purchasing	1,011.75
210	SOLID WASTE OLMSTED COUNTY	Electricity Purchased	1,011.57
211	MACQUEEN EQUIPMENT	Suction Hose	1,002.93
212	TOKAY SOFTWARE	Backflow Prevention	1,000.00
213			
214		<b>Price Range Total:</b>	<b>284,188.49</b>
215			
216	<b><u>0 to 1,000 :</u></b>		
217			
218	ELITE CARD PAYMENT CENTER	Summarized transactions: 74	18,495.46
219	EXPRESS SERVICES INC	Summarized transactions: 24	18,000.00
220	CINTAS CORP	Summarized transactions: 49	8,769.42
221	GRAYBAR ELECTRIC COMPANY INC	Summarized transactions: 31	7,075.29
222	STUART C IRBY CO INC	Summarized transactions: 26	6,944.34
223	Customer Refunds (CIS)	Summarized transactions: 145	6,576.51
224	BORDER STATES ELECTRIC SUPPLY	Summarized transactions: 28	6,184.41
225	REBATES	Summarized transactions: 41	4,867.25
226	CORE & MAIN LP (P)	Summarized transactions: 19	4,106.83
227	POMPS TIRE SERVICE INC	Summarized transactions: 11	3,926.55
228	VIKING ELECTRIC SUPPLY INC	Summarized transactions: 30	3,391.10
229	LAWSON PRODUCTS INC (P)	Summarized transactions: 10	3,120.99
230	RESCO	Summarized transactions: 14	2,838.27
231	DAVIES PRINTING COMPANY INC	Summarized transactions: 13	2,772.51
232	CRESCENT ELECTRIC SUPPLY CO	Summarized transactions: 27	2,646.34
233	WESCO DISTRIBUTION INC	Summarized transactions: 19	2,581.81
234	FIRST CLASS PLUMBING & HEATIN	Summarized transactions: 10	2,507.16
235	GRAINGER INC	Summarized transactions: 23	2,347.86
236	U S A SAFETY SUPPLY	Summarized transactions: 12	2,188.13
237	ALFREDSON PAT	Summarized transactions: 6	1,896.40
238	POLLARDWATER	Summarized transactions: 7	1,854.34
239	ALL SYSTEMS INSTALLATION dba	Summarized transactions: 8	1,768.29
240	ADVANCE AUTO PARTS	Summarized transactions: 32	1,672.29
241	JACKSON SIDNEY	Summarized transactions: 5	1,570.22
242	MCMASTER CARR SUPPLY COMPANY	Summarized transactions: 24	1,565.60



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243	WERNER ELECTRIC SUPPLY	Summarized transactions: 15	1,506.94
244	BOLTON AND MENK (P)	Summarized transactions: 5	1,485.00
245	INNOVATIVE OFFICE SOLUTIONS L	Summarized transactions: 15	1,470.74
246	SUTTON JEREMY	Summarized transactions: 7	1,425.15
247	OLDCASTLE PRECAST INC (P)	Summarized transactions: 2	1,401.69
248	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 5	1,335.32
249	HALO BRANDED SOLUTIONS	Summarized transactions: 6	1,255.69
250	MOORE RYAN	Summarized transactions: 6	1,253.05
251	EPLUS TECHNOLOGY INC	Summarized transactions: 4	1,234.60
252	METRO SALES INC	Summarized transactions: 2	1,231.37
253	CLEMENTS CHEVROLET CADILLAC S	Summarized transactions: 6	1,222.47
254	AMARIL UNIFORM COMPANY	Summarized transactions: 15	1,180.45
255	CITY OF ROCHESTER	Summarized transactions: 4	1,157.04
256	FASTENAL COMPANY	Summarized transactions: 19	1,121.65
257	AMAZON.COM	Summarized transactions: 11	1,100.73
258	ASPLUNDH TREE EXPERT CO INC (	Summarized transactions: 2	1,078.16
259	STEVE BENNING ELECTRIC	Summarized transactions: 4	1,070.52
260	ELITE CARD PAYMENT CENTER	Summarized transactions: 2	1,036.24
261	CENTRAL STATES GROUP	Summarized transactions: 5	1,018.62
262	BLY LINDA	Summarized transactions: 3	992.79
263	AUTHORIZE.NET	Summarized transactions: 1	991.75
264	EDELMANN & ASSOCIATES INC	Summarized transactions: 2	988.62
265	OPEN ACCESS TECHNOLOGY	Summarized transactions: 1	987.05
266	FLEETPRIDE INC	Summarized transactions: 3	979.82
267	AUGUST WINTER & SONS INC	Summarized transactions: 1	944.00
268	SCHMIDT GOODMAN OFFICE PRODUC	Summarized transactions: 1	935.00
269	CINTAS CORP	Summarized transactions: 5	918.98
270	CUSTOM COMMUNICATIONS INC	Summarized transactions: 2	916.72
271	U S POSTMASTER	Summarized transactions: 2	915.00
272	GOPHER STATE ONE CALL	Summarized transactions: 1	913.28
273	GOPHER STATE ONE CALL	Summarized transactions: 1	913.27
274	LEAGUE OF MN CITIES INS TRUST	Summarized transactions: 1	903.25
275	KOTSCHERVAR MARK	Summarized transactions: 7	889.72
276	CENTURYLINK	Summarized transactions: 3	880.26
277	ARROW ACE HARDWARE-ST PETER	Summarized transactions: 8	859.94
278	ARNOLDS SUPPLY & KLEENIT CO (	Summarized transactions: 7	804.29
279	MN DEPT OF HEALTH - WELL MGMT	Summarized transactions: 1	800.00
280	MN UNCLAIMED PROPERTY DIVISIO	Summarized transactions: 1	762.83
281	BENSON ANTHONY	Summarized transactions: 1	750.30
282	READY MIX CONCRETE COMPANY LL	Summarized transactions: 1	747.06
283	TOKAY SOFTWARE	Summarized transactions: 3	743.19
284	NETWORK SERVICES COMPANY	Summarized transactions: 7	738.19
285	BARR ENGINEERING COMPANY (P)	Summarized transactions: 1	737.00
286	OPERATION TECHNOLOGY INC	Summarized transactions: 2	725.85
287	PITNEY BOWES INC	Summarized transactions: 1	724.87
288	CLAREY'S SAFETY EQUIPMENT dba	Summarized transactions: 5	718.47
289	ERC WIPING PRODUCTS INC	Summarized transactions: 2	714.30
290	INTERSTATE MOTOR TRUCKS INC	Summarized transactions: 5	701.65
291	THE ENERGY AUTHORITY INC	Summarized transactions: 1	699.98
292	HACH COMPANY	Summarized transactions: 2	668.07
293	IDEXX DISTRIBUTION CORP	Summarized transactions: 3	635.97
294	J B CONTROLS INC	Summarized transactions: 2	626.27
295	SCHUMACHER ELEVATOR COMPANY	Summarized transactions: 1	618.00
296	WARNING LITES OF MN INC (P)	Summarized transactions: 1	580.80
297	THE FENCE PROS LLC (P)	Summarized transactions: 1	575.00
298	ULINE	Summarized transactions: 2	563.83
299	ZEE MEDICAL SERVICE INC (P)	Summarized transactions: 2	562.00
300	GEARGRID LLC	Summarized transactions: 7	546.81
301	PROCESS MEASUREMENT CO	Summarized transactions: 2	545.17
302	BOWMANS SAFE & LOCK SHOP LTD	Summarized transactions: 4	538.31
303	ADVANCED DISPOSAL SVC SOLID W	Summarized transactions: 2	533.46

Attachment: AP Board CrMo (9802 : a/p board listing)

**ROCHESTER PUBLIC UTILITIES**  
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For 10/10/2018 To 11/08/2018  
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304	VARIDESK LLC	Summarized transactions: 2	529.03
305	ALL SEASONS POWER & SPORT INC	Summarized transactions: 8	517.52
306	VERTEX US HOLDINGS INC	Summarized transactions: 1	517.20
307	GILLUND ENTERPRISES	Summarized transactions: 5	508.06
308	HACH COMPANY	Summarized transactions: 9	501.28
309	T S E INTERNATIONAL INC	Summarized transactions: 9	499.48
310	STEVE BENNING ELECTRIC	Summarized transactions: 2	494.00
311	ROYAL TIRE INC	Summarized transactions: 3	488.46
312	RONCO ENGINEERING SALES INC	Summarized transactions: 8	488.07
313	BADGER METER INC (P)	Summarized transactions: 14	480.37
314	A T & T	Summarized transactions: 1	473.40
315	CHOSEN VALLEY TESTING	Summarized transactions: 1	448.00
316	BLUESPIRE STRATEGIC MARKETING	Summarized transactions: 1	413.44
317	CORE & MAIN LP (P)	Summarized transactions: 3	407.31
318	SCHEEL LAWRENCE	Summarized transactions: 1	400.00
319	CITY OF ROCHESTER	Summarized transactions: 1	400.00
320	IHEART MEDIA dba	Summarized transactions: 1	388.00
321	GEXPRO (P) DBA REXEL USA INC.	Summarized transactions: 3	385.23
322	MISSISSIPPI WELDERS SUPPLY CO	Summarized transactions: 11	383.63
323	PEOPLES ENERGY COOPERATIVE	Summarized transactions: 2	381.14
324	HILLCREST LICENSE BUREAU	Summarized transactions: 1	377.62
325	ACTION PLUMBING AND HEATING	Summarized transactions: 1	369.00
326	THOMAS TOOL & SUPPLY INC	Summarized transactions: 4	362.20
327	NALCO COMPANY	Summarized transactions: 6	354.50
328	NORTHERN / BLUETARP FINANCIAL	Summarized transactions: 7	353.49
329	FARMER'S TOP SOIL INC	Summarized transactions: 1	353.07
330	CENTURYLINK	Summarized transactions: 1	327.25
331	HEIMER WILLIAM T	Summarized transactions: 1	325.00
332	KAUTZ TRAILER SALES dba	Summarized transactions: 1	320.63
333	LITTLE DAVID	Summarized transactions: 2	319.40
334	INGERSOLL RAND COMPANY	Summarized transactions: 4	316.28
335	ROCH LANDSCAPING SERVICES INC	Summarized transactions: 2	311.77
336	AIRGAS SAFETY INC (P)	Summarized transactions: 2	311.04
337	AUTOMATIONDIRECT.COM	Summarized transactions: 1	309.00
338	CREDIT MANAGEMENT LP	Summarized transactions: 4	304.89
339	SOMA CONSTRUCTION INC	Summarized transactions: 2	300.98
340	BAKER TILLY	Summarized transactions: 1	300.00
341	HAWK & SON'S INC	Summarized transactions: 1	300.00
342	MINNESOTA BACKFLOW SERVICES L	Summarized transactions: 1	300.00
343	CURVATURE INC	Summarized transactions: 2	299.26
344	NYHUS STEVE	Summarized transactions: 2	292.50
345	PROPERTY RECORDS OLMSTED COUN	Summarized transactions: 6	292.00
346	DATA PRACTICES OFFICE	Summarized transactions: 3	285.00
347	BLACKBURN MANUFACTURING CO	Summarized transactions: 1	282.15
348	SHERWIN WILLIAMS CO	Summarized transactions: 2	276.37
349	ROCH PLUMBING & HEATING CO IN	Summarized transactions: 1	273.08
350	NEENAH FOUNDRY COMPANY	Summarized transactions: 1	269.73
351	NELSON TODD J	Summarized transactions: 2	268.94
352	UNITED RENTALS INC	Summarized transactions: 1	264.94
353	FRONTIER	Summarized transactions: 1	259.32
354	PEOPLES ENERGY COOPERATIVE	Summarized transactions: 1	245.74
355	TUPPER MATTHEW	Summarized transactions: 2	240.60
356	FRANZ REPROGRAPHICS INC	Summarized transactions: 2	240.02
357	T E C INDUSTRIAL INC	Summarized transactions: 7	233.45
358	MENARDS ROCHESTER NORTH	Summarized transactions: 3	231.36
359	DELL MARKETING LP	Summarized transactions: 4	229.76
360	LEAGUE OF MN CITIES INS TRUST	Summarized transactions: 1	225.00
361	MENARDS ROCHESTER SOUTH	Summarized transactions: 7	222.00
362	MENARDS ROCHESTER NORTH	Summarized transactions: 4	207.80
363	STURM DANNY K	Summarized transactions: 1	203.00
364	POSSABILITIES OF SOUTHERN MN	Summarized transactions: 2	201.50

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365	MSC INDUSTRIAL SUPPLY CO INC	Summarized transactions: 2	197.32
366	BATTERIES PLUS	Summarized transactions: 1	191.84
367	USA BLUE BOOK DBA	Summarized transactions: 2	191.78
368	NARDINI FIRE EQUIPMENT CO INC	Summarized transactions: 1	191.00
369	OLSEN CHAIN & CABLE CO INC	Summarized transactions: 3	186.40
370	LANGUAGE LINE SERVICES INC	Summarized transactions: 1	179.70
371	SARGENTS LANDSCAPE NURSERY IN	Summarized transactions: 2	178.06
372	WINKELS ELECTRIC INC	Summarized transactions: 1	172.05
373	MONSON STEVE	Summarized transactions: 2	167.86
374	HOGAN PETER	Summarized transactions: 2	164.93
375	ZEP SALES & SERVICE	Summarized transactions: 2	163.52
376	CHARTER COMMUNICATIONS HOLDIN	Summarized transactions: 2	161.08
377	OSWEILER TODD	Summarized transactions: 2	153.88
378	CONNEY SAFETY PRODUCTS LLC	Summarized transactions: 2	143.34
379	MCNEILUS STEEL INC	Summarized transactions: 1	142.71
380	LARSON GUSTAVE A COMPANY INC	Summarized transactions: 1	140.09
381	KAESER COMPRESSORS INC.	Summarized transactions: 5	138.63
382	CORPORATE WEB SERVICES INC	Summarized transactions: 1	135.00
383	SHERWIN WILLIAMS CO	Summarized transactions: 2	128.59
384	FEDEX SHIPPING	Summarized transactions: 5	126.27
385	VANCO SERVICES LLC	Summarized transactions: 1	120.16
386	MN SECREATRY OF STATE-NOTARY	Summarized transactions: 1	120.00
387	NORTHERN / BLUETARP FINANCIAL	Summarized transactions: 2	112.97
388	GARCIA GRAPHICS INC	Summarized transactions: 2	112.50
389	VERIZON WIRELESS	Summarized transactions: 1	110.04
390	HY VEE	Summarized transactions: 2	105.69
391	REINDERS INC	Summarized transactions: 1	102.07
392	BOSTON KRISTA	Summarized transactions: 1	101.41
393	REBATES	Summarized transactions: 2	100.00
394	MCMASTER CARR SUPPLY COMPANY	Summarized transactions: 2	99.86
395	NICKELS SCOTT	Summarized transactions: 1	93.74
396	QUALITY OVERHEAD DOOR INC	Summarized transactions: 1	90.00
397	JENNINGS, STROUSS & SALMON PL	Summarized transactions: 1	89.00
398	GRAINGER INC	Summarized transactions: 1	85.72
399	SPECTRUM REACH	Summarized transactions: 1	85.50
400	SLEEPY EYE TELEPHONE CO	Summarized transactions: 1	84.76
401	AIRGAS SAFETY INC (P)	Summarized transactions: 2	82.38
402	MENARDS ROCHESTER SOUTH	Summarized transactions: 2	76.92
403	C & N UPHOLSTERY	Summarized transactions: 1	75.00
404	ARBOR DAY FOUNDATION	Summarized transactions: 1	75.00
405	CENTRAL FINANCE OLMSTED COUNT	Summarized transactions: 2	73.50
406	CG HOLDINGS - BELGIUM NV	Summarized transactions: 1	72.33
407	DAKOTA SUPPLY GROUP	Summarized transactions: 3	68.36
408	THOMAS TOOL & SUPPLY INC	Summarized transactions: 2	68.35
409	LOWER PHOTOGRAPHY & STUDIO db	Summarized transactions: 1	64.13
410	RONCO ENGINEERING SALES INC	Summarized transactions: 2	61.02
411	INGRAM PRODUCTS INC	Summarized transactions: 2	60.46
412	PETERSON ZACHARY	Summarized transactions: 1	60.00
413	INNER TITE CORP	Summarized transactions: 3	55.23
414	U S BANK	Summarized transactions: 1	53.15
415	GREAT RIVER ENERGY	Summarized transactions: 1	52.08
416	ALTERNATIVE TECHNOLOGIES INC	Summarized transactions: 1	50.00
417	ADVANTAGE DIST LLC (P)	Summarized transactions: 2	47.24
418	ZIEGLER INC	Summarized transactions: 1	43.06
419	MINOGUE PETER	Summarized transactions: 1	43.00
420	THRONDSOIN OIL & LP GAS CO	Summarized transactions: 1	40.00
421	SOLID WASTE OLMSTED COUNTY	Summarized transactions: 1	40.00
422	KULLOT TRAILER PARTS & SERVIC	Summarized transactions: 1	39.48
423	DAVE SYVERSON TRUCK CENTER IN	Summarized transactions: 1	38.39
424	GOODIN COMPANY	Summarized transactions: 6	34.94
425	NOVASPECT INC	Summarized transactions: 1	34.48

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426	BLACKBURN MANUFACTURING CO	Summarized transactions: 1	33.44
427	SOLID WASTE OLMSTED COUNTY	Summarized transactions: 1	31.80
428	SEEME PRODUCTIONS LLC	Summarized transactions: 1	30.00
429	ANDERTON RANDY	Summarized transactions: 1	30.00
430	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 1	25.32
431	HAWKINS INC	Summarized transactions: 3	20.52
432	BLEVINS JAN	Summarized transactions: 1	20.00
433	CHS ROCHESTER	Summarized transactions: 1	16.03
434	ATLAS COPCO COMPRESSORS LLC	Summarized transactions: 1	14.11
435	MISTER CARWASH	Summarized transactions: 1	8.89
436	COOKE ROBERT	Summarized transactions: 1	7.98
437	NORTHERN TOOL & EQUIPMENT CO	Summarized transactions: 1	7.91
438	BLOM BRYAN	Summarized transactions: 1	6.00
439			
440		<b>Price Range Total:</b>	202,935.15
441			
442		<b>Grand Total:</b>	10,782,534.13

Attachment: AP Board CrMo (9802 : a/p board listing)

## FOR BOARD ACTION

Agenda Item # (ID # 9806)

Meeting Date: 11/27/2018

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**SUBJECT: Macro Site Lease**

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**PREPARED BY: Mona Hoefl**

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**ITEM DESCRIPTION:**

As you may remember, a few years back, staff developed a new Macro Site Lease for telecommunications installations on RPU's water storage tanks. This new lease was updated with terms that were better suited to the telecommunications environment. Currently, all carriers have at least one site on this lease structure and are familiar with the language. Over the years, staff has heard from carriers that the approval process is long and impacts their ability to plan the work. In an attempt to further simplify the process, this action seeks approval of the Lease agreement as a template that will allow staff to execute agreements without the need to bring each individual carrier lease forward for board approval.

Given the nature of the telecommunications market, like equipment modifications, staff is also asking the board to delegate authority to the General Manager, after consulting the City Attorney, to approve non-material changes, future amendments or subsequent agreements that are consistent with the master agreement.

RPU currently manages macro site leases on 15 sites with 6 carriers resulting in a total of 29 leases.

The City Attorney has reviewed this agreement.

**UTILITY BOARD ACTION REQUESTED:**

Board approval of the Macro Site Lease and (1) approve a resolution authorizing the Mayor and City Clerk to execute the agreements and (2) authorize the General Manager, after consulting the City Attorney, to approve future amendments or subsequent agreements resulting in non-material changes consistent with the Lease agreement.

RPU Contract #:

RPU Site ID:

Tenant Site ID:

## LEASE AGREEMENT

This Lease Agreement (“Lease”) is entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_ between the **CITY OF ROCHESTER**, a Minnesota municipal corporation, acting through its Public Utility Board (“Landlord”), and \_\_\_\_\_, a STATE TYPE OF COMPANY company (“Tenant”).

### Recitals

**WHEREAS**, the Landlord is the owner of the real property (the “Property”) located at \_\_\_\_\_, Rochester, Minnesota 5590X, and the water tower located thereon (the “Structure”), commonly known as the \_\_\_\_\_ Water Tower, and the Property is legally described in Exhibit “A”, *Legal Description*, attached hereto and incorporated herein (“Property”); and

**WHEREAS**, Landlord and Tenant entered into a Site Agreement dated \_\_\_\_\_ (“Original Lease”), which Original Lease expires by its terms on \_\_\_\_\_; and

**WHEREAS**, in lieu of extending the Original Lease, Landlord and Tenant agree to enter into a new lease for the continued use of the Leased Premises (as defined below). Landlord and Tenant hereby agree that the Original Lease shall terminate effective as of 11:59 p.m. on \_\_\_\_\_ without further documentation or action by the parties.

**NOW, THEREFORE**, the parties agree as follows:

### **1. Leased Premises.**

- (a) Landlord hereby leases to Tenant certain space located on the Property and the Structure (collectively, the “Leased Premises”) consisting of the following:
- (1) ground space comprised of approximately \_\_\_\_\_ square feet, subject to any and all existing easements;
  - (2) Structure exterior space for attachment of antennas at alpha, beta & gamma sectors at \_\_\_\_\_ AGL;
  - (3) space required for cable runs to connect equipment and antennas;
  - (4) non-exclusive easements required to run utility lines and cables (the “Utility Easement”); and
  - (5) a non-exclusive easement across the Property for reasonable access (the “Access Easement”).
- (b) No other space or property interests are being leased to Tenant except as described above and as described on Exhibit “A”, *Legal Description*.

### **2. Terms/Renewals.**

- (a) The initial term of this Lease shall commence on \_\_\_\_\_ (the “Commencement Date”), and shall expire on \_\_\_\_\_ (“Initial Term”).
- (b) Tenant shall have the right to extend this Lease for three (3) additional five (5) year terms (each a “Renewal Term”) subject to (c) below.
- (c) This Lease shall automatically renew for each successive Renewal Term unless Tenant is in default beyond applicable notice and cure periods of any of the terms or conditions of this Lease or any other lease Landlord currently has with Tenant, or unless Tenant or Landlord provides written notice to the other party of its intention not to renew at least ninety (90) days before the expiration of the Initial Term or any Renewal Term.

### 3. Rent.

- (a) Tenant shall make all payments of rent to Landlord to the address as listed on the invoice.
- (b) Tenant shall pay rent annually in advance, as indicated in the payment schedule below:
  - (1) Tenant shall pay Landlord, as rent, the sum of \$\_\_\_\_\_ per year based upon Tenant’s approved antenna facilities (the “Antenna Facilities”) identified in Exhibit “B,” *Construction Drawings*, attached hereto and incorporated herein.
  - (2) The first year’s rent shall be pro-rated to the end of 2015 based on the Commencement Date, and shall be paid within thirty (30) days following full execution of the Lease. Thereafter, the rent due hereunder shall be paid on or before the fifth (5<sup>th</sup>) day of January of each succeeding year.
  - (3) Late fees shall be assessed as determined by Landlord’s Board approved policy at the time of the delinquency, provided that such policy is provided to Tenant in writing, in advance.
  - (4) Tenant shall not install, and/or operate any additional antennas or related equipment beyond those Antenna Facilities identified in Exhibit “B,” *Construction Drawings*, without the prior written consent of Landlord, such consent not to be withheld, conditioned or delayed without cause. Such additional equipment may require an amendment to the Lease and increase in rent, as may be reasonably determined by Landlord. Notwithstanding, Tenant has the right to perform routine maintenance and repairs upon notice to Landlord as indicated by Exhibit “C,” *Site Access Procedure*, attached hereto and incorporated herein.
  - (5) Commencing January 1, 201\_, and on January 1<sup>st</sup> of each subsequent year, the rent shall be increased annually by XXXX percent (X%). The rent shall never be decreased.

### 4. Use of Leased Premises.

#### (a) Primary Use of Property

The primary use and purpose of the Property, including the Leased Premises, is for a water storage structure and appurtenances to provide water service to customers of the

Landlord (“Primary Use”). Landlord’s operations in connection with pursuit of the Primary Use (“Landlord’s Operations”) take priority over Tenant’s operations.

(b) User priority

Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference, emergency public safety needs, Structure repair or reconditioning, or other conflict while this Lease is in effect, and Tenant’s use shall be subordinate accordingly:

- (1) Landlord’s Operations;
- (2) Public safety agencies, including law enforcement, fire, and ambulance services, that are not related to Landlord;
- (3) Pre-existing Tenants (a “Pre-existing Tenant” is defined as a tenant that installed its equipment prior to the installation of Tenant’s equipment under the Original Lease);
- (4) Tenant.

(c) Jeopardy of Primary Use

- (1) In the event that the Landlord’s Primary Use of the Structure is put at risk solely because of Tenant’s operations (“Jeopardy”), it shall become the immediate and affirmative duty of the Tenant to diligently pursue a cure of the occurrence that causes the Jeopardy.
- (2) The parties agree that such an occurrence caused by Tenant’s use or operation of Tenant’s Antenna Facilities warrants an emergency response whereby the Landlord shall provide notice verbally by telephone, by facsimile or by e-mail, whichever is determined by the Landlord to be the most immediate method of notification. Notice of Jeopardy of Primary Use caused by Tenant’s operations shall be phone or e-mailed to the following:

Tenant’s Emergency Responder:  
 Telephone Number: \_\_\_\_\_  
 Email: \_\_\_\_\_

- (3) Tenant shall send a qualified technician or representative to the Leased Premises within twenty-four (24) hours from the time that the notice of Jeopardy is provided by Landlord. The required twenty-four (24) hour emergency response time under these circumstances is applicable 24 hours a day, 7 days a week. The qualified technician or representative shall be capable of assessing the situation and eliciting the necessary response, including any repairs, alterations or modifications to Tenant’s antennas, towers or ground equipment.
- (4) If such Jeopardy cannot be cured within twenty-four (24) hours after the notice was received, the Tenant shall immediately cease operation of the Antenna Facilities or the use of the specific equipment causing such Jeopardy until such Jeopardy is cured to the reasonable satisfaction of Landlord.

(5) In the event of Jeopardy that poses an immediate threat of substantial harm or damage to the water supply, to persons, and/or property on the Property, as solely determined by Landlord (“Severe Jeopardy”), Landlord may enter the Leased Premises and take actions it determines are required to protect the water, individuals or personal property from such Severe Jeopardy; provided that promptly after such emergency entry onto the Leased Premises, and in no event later than twenty-four (24) hours after such entry, Landlord shall give written notice to Tenant of Landlord’s emergency entrance and the specific action taken by the Landlord at the Leased Premises.

(d) Tenant’s Use of Leased Premises

- (1) Tenant shall have the exclusive right, at its sole cost and expense, to use the Leased Premises for the transmission and reception of communications signals (“Approved Use”).
- (2) In accordance with this Approved Use, the Tenant has the right, with Landlord’s approval, to install, operate, maintain, repair, replace and remove its Antenna Facilities as shown in Exhibit “B”, *Construction Drawings*.
- (3) Tenant shall be responsible for all reasonable expenses incurred by the Landlord resulting from the use and/or occupancy of the Leased Premises by Tenant. Landlord shall submit an itemized invoice of such expenses together with reasonable supporting documentation evidencing such expenses to Tenant and Tenant shall make payment to Landlord within thirty (30) days of receipt.

(e) Laws Governing Use

Tenant shall use the Leased Premises in compliance with all applicable Federal Communications Commission (“FCC”), federal, state, and local rules, laws and regulations.

**5. Installation of Equipment and Modifications.**

- (a) For the initial installation of all Antenna Facilities and for any and all subsequent revisions and/or modifications thereof, or additions thereto, Tenant shall complete an application which shall include any information reasonably requested by Landlord of such requested update or replacement, including but not limited to construction drawings, engineering studies and specifications as may be required, carried out at Tenant’s expense. The application and subsequent drawings, studies and specifications must be approved by Landlord, which will not be unreasonably withheld, conditioned or delayed.
- (b) When requested, Tenant agrees to provide the following:

Construction Plans

- (1) line or CAD drawings showing location of all planned installations plus materials and construction methods;



- (2) specifications for all planned installations;
- (3) diagrams of proposed Antenna Facilities for initial installation, and subsequently, diagrams of proposed Antenna Facilities for any and all approved revisions, modifications, or additions;
- (4) a complete and detailed inventory of all equipment and personal property of Tenant actually placed on the Leased Premises. Landlord retains the right, at its sole cost and expense, to survey the installed equipment.

#### Engineering Studies

##### 1) Structural Study

Performed by a qualified engineer, must show that the Structure, including handrail and other appurtenances permanently attached, is able to support the existing Antenna Facilities and the proposed additional Antenna Facilities. If the study finds that the Structure is inadequate to support the proposed additional loads, Tenant may provide reasonable modification plans to accommodate Tenant's proposed loading for Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

##### 2) Interference Study

Tenant shall provide at least thirty (30) days written notice to Landlord before modifying frequencies on the Leased Premises. Said notice shall describe all equipment and frequencies proposed to be added or modified and shall be subject to review and approval by the RF Engineer, which shall not be withheld, conditioned or delayed without cause. Said review, performed by an independent professional radio frequency engineer ("RF Engineer"), shall consist of an interference study to ensure that the modified or additional frequencies will not cause harmful radio interference to Landlord's Operations or the operations of Landlord's existing tenants and shall be submitted to Landlord no later than thirty (30) days after frequencies are provided by Tenant.

Tenant may perform the interference studies and submit the results to the Landlord for review and approval. However, Landlord shall, in its sole discretion, retain the right provided herein to submit the study results to the RF Engineer for review at Tenant's sole expense.

In connection with its Approved Use, Tenant shall have the right to use any frequencies licensed to Tenant or its affiliates by the FCC.

- (c) Landlord reserves the right to contract with a third party for construction related services.
- (d) Landlord may utilize an escrow account as indicated on the application to facilitate the reimbursement process. The Landlord and their designated party will discontinue all review under this Paragraph if the amount of the original escrow account is insufficient to cover its costs, until the escrow account is adequately funded by Tenant such that Landlord is able to cover its costs of review. Landlord shall provide Tenant with reasonable supporting documentation describing such insufficiency and the proposed

amounts required by Landlord to cover its costs of review.

(e) Contractor Approval

Any contractor chosen by Tenant to carry out construction, installation, maintenance or any other work on the Structure must be pre-approved by the Landlord prior to the pre-construction meeting.

The Landlord retains sole discretion and reserves the right to reject any and all contractors the Tenant may choose for the installation work as determined to be in the best interests of the Landlord and to waive any informalities. If Landlord rejects all contractors that Tenant proposes, Landlord shall provide the name of at least two (2) contractors that will be acceptable to Landlord.

(f) Construction Inspection.

All construction activity shall be subject to inspection and approval by the Landlord, such approval not to be unreasonably withheld, conditioned or delayed, to ensure compliance with the approved Construction Plans and the terms of this Lease. Inspection will be performed beginning with the pre-construction meeting and continuing through installation/construction/punch-list and verification of as-built drawings at project completion as determined by Landlord. The anticipated cost of said inspections is included in the escrow fee when the application is submitted.

Landlord will not arbitrarily require more inspection than is reasonably necessary to ensure the continued delivery of service and security of Landlord's property.

If deemed necessary by the Landlord, construction work performed without approval will not be accepted and shall be removed or uninstalled at Tenant's sole expense, provided Landlord notifies Tenant of such non-compliance within thirty (30) days of submission of as-built drawings to Landlord.

(g) Exposed Antenna Facilities

All Antenna Facilities affixed to the Structure which have exterior exposure shall be as close to the color of the Structure as is commercially available to the Tenant. For exposed coaxial cables, Landlord reserves the right to require Tenant to provide cables in manufactured colors in lieu of painting.

(h) Damage by Tenant

Any damage to the Property, Leased Premises, Landlord's equipment or any other tenant's equipment or utilities thereon caused by Tenant's installation or operations shall be repaired or replaced at Tenant's expense and to Landlord's reasonable satisfaction within thirty (30) days following receipt of written notice.

(i) As-built drawings

Within thirty (30) days after Tenant activates or completes approved modifications on the Antenna Facilities, Tenant shall provide Landlord with a site plan in electronic file format compatible with Landlord's record file system consisting of as-built drawings of the Antenna Facilities and the improvements installed on the Property, which shall show the actual location of all equipment and improvements. Said drawings shall be accompanied

by a complete and detailed site survey of the property, inventory of all equipment, personal property, and Antenna Facilities.

**6. Maintenance and Repairs.**

(a) Property

Landlord reserves the right to take any action it deems necessary, in its sole and reasonable discretion, to repair, maintain, alter, or improve the Property in connection with Landlord's Operations.

(b) Leased Premises

Tenant shall, at its own cost and expense, maintain the Antenna Facilities in good and safe condition, and in compliance with applicable fire, health, building, and other life safety codes applicable to Tenant's Approved Use of the Leased Premises.

(c) Structure Reconditioning and Repairs

- (1) From time to time, Landlord paints, reconditions, or otherwise improves or repairs the Structure in a substantial way ("Reconditioning Work"). Landlord shall reasonably cooperate with Tenant to carry out Reconditioning Work activities in a timely manner and in a manner that minimizes interference with Tenant's Approved Use.
- (2) Prior to commencing Reconditioning Work, Landlord shall provide Tenant with at least ninety (90) days prior written notice thereof. Upon receiving such notice, it shall be the sole responsibility of Tenant to provide adequate measures to cover or otherwise protect Tenant's Antenna Facilities from the consequences of such activities, including but not limited to paint and debris fallout. Landlord reserves the right to require Tenant to temporarily remove all Antenna Facilities from the Structure and Leased Premises during Reconditioning Work.
- (3) During Landlord's Reconditioning Work, Tenant may, with Landlord's approval, maintain a mobile site, install a temporary pole on the Property or, on any land owned or controlled by Landlord in the immediate area of the Property. If Property will not accommodate mobile equipment, it shall be Tenant's responsibility to locate auxiliary sites. Landlord agrees to abate rent during any period that Tenant is unable to operate at the Property due to the Reconditioning Work.
- (4) For minor repairs or maintenance affecting the Leased Premises, Landlord agrees to provide Tenant with at least fourteen (14) days advance written notice of any such activities and to reasonably cooperate with Tenant to carry out such activities in a manner that minimizes interference with Tenant's Approved Use. Minor repairs or maintenance items under this provision are defined as any repair or maintenance by Landlord that does not require Tenant to remove its Antenna Facilities from the Structure, and are 10 days or less in duration. All other repairs and maintenance that impact Tenants operations shall be subject to the notice requirements of 6(c).

**7. Property Access.**

Access to the Property, including the Leased Premises, by outside persons, including Tenant's employees, agents and assigns, shall at all times be governed by Landlord's Site Access Procedure, attached hereto and incorporated herein as Exhibit "C". Tenant agrees it

shall conduct its operations on the Property and the Leased Premises in accordance with all requirements and conditions of said exhibit. Subject to said requirements and conditions Tenant and Landlord agree to the following:

- (a) Landlord shall, at all times provide Tenant ingress, egress, and access to the Premises over the Access Easement, subject to (i) the terms of this Lease; (ii) the Landlord's hours of operation and prevailing wages that are due for such department employees to provide access, and (iii) twenty-four hours advance notice by Tenant to Landlord.
- (b) Landlord will not allow any mechanics' or materialmen's liens to be placed against the Property as a result of Tenant's work on the Property.
- (c) Access to antenna equipment on the Structure shall be with prior notice, Tenant's employee's identification and in the presence of Landlord's employee.
- (d) Both Landlord and Tenant shall maintain a written record of all site visits, including the name of all personnel.
- (e) In the event it is necessary for Tenant to have access to the Structure at some time other than the normal working hours of Landlord, Landlord may charge Tenant for reasonable expenses, including employees' wages that Landlord may incur in providing such access to Tenant.
- (f) Tenant shall have access to the ground-based Leased Premises at all times, in accordance with the requirements of this section.
- (g) Landlord retains the right to examine and inspect the Leased Premises for safety reasons and to ensure Tenant's compliance with the terms of this Lease. Landlord shall be liable for, and hold harmless Tenant from, any damage to the Leased Premises or to Tenant's equipment and Antenna Facilities caused by Landlord in exercising its right to examine and inspect the Leased Premises.

#### 8. Utilities.

- (a) Landlord makes no representations that utilities adequate for Tenant's use of the Leased Premises are available. Tenant shall separately meter charges for the consumption of electricity and other utilities associated with its use of the Leased Premises and shall be responsible to promptly pay all costs associated therewith. Landlord will cooperate with Tenant in Tenant's efforts to obtain utilities from any location provided by the servicing utility.
- (b) All of Tenant's electrical wire, telephone cables, optical fiber and related equipment ("Utilities") and Tenant's communication lines on the Property and/or the Leased Premises shall be located underground, except for the utility pedestal or h-frame, if any, hybrid cables on the Structure, and within the Utility Easement, according to the Landlord's applicable code, rules and regulations and all state codes, rules and regulations. Tenant shall, within thirty (30) days following receipt of written request from Landlord, provide Landlord with an as-built plan showing the exact location of all Tenant's Utilities and hybrid cables installed on the Leased Premises and the Property. Tenant shall furnish Landlord with pertinent information as to the exact type of AC power used by the Tenant. The Tenant agrees that, within ten (10) days following the receipt of written request of the Landlord, it will field locate all Utilities and hybrid cables at Tenant's expense.

- (c) It shall be the responsibility of Tenant, its agents, contractors and/or subcontractors at Tenant's sole cost and expense to contact Gopher One Call and/or all other parties including, but not limited to, Landlord and all of Landlord's other tenants occupying the Property for locate requests prior to any construction or installation of the Tenant's antennas, tower equipment, ground equipment, Utilities or hybrid cables and other equipment described in this Lease, on the Property. If any of the Landlord's other tenants decline to locate their utilities, it shall be the responsibility of Tenant to locate said Tenant's Utilities at Tenant's sole cost and expense. Landlord agrees that it will assist with contact information for the other tenants upon the written request of the Tenant. Tenant agrees that Tenant will, upon the reasonable request of the Landlord or another tenant of the Landlord, locate all of its cables, conduit and utilities.
- (d) As partial consideration for rent paid under this Lease, Landlord hereby grants to the Tenant an appurtenant non-exclusive easement for Tenant's Utilities and hybrid cable over the Utility Easement and an appurtenant non-exclusive easement for ingress, egress, and access to the Premises over the Access Easement to service Tenant's Antenna Facilities and Utilities at all times during the term of this Lease. Upon notice, Landlord shall have the right, at Landlord's sole expense, to relocate the Access Easement, provided such new location shall not materially interfere with Tenant's operations. The Utility and Access Easements provided hereunder shall have the same term as this Lease.

#### **9. Personal Property and Real Estate Taxes.**

If any of Tenant's improvements constructed on the Leased Premises should cause the Property, or any portion of it, to be taxed for real estate purposes, it shall be the liability of Tenant to pay that portion of such property taxes directly attributable to Tenant's equipment, provided Landlord shall give Tenant prior written notification of such taxes so that Tenant will have the opportunity to appear before the taxing authority to contest such taxes. Notwithstanding Tenant's right to contest such taxes, Tenant shall pay its share of such taxes within ninety (90) days of receiving notice of the same.

#### **10. Compliance and Statutes, Regulations, and Approvals.**

- (a) Tenant's use of the Leased Premises herein is contingent upon its obtaining all certificates, permits, zoning, and other approvals that may be required by any federal, state or local authority, including but not limited to an engineering study and a radio frequency interference study. Tenant shall, at its sole cost and expense, obtain all such necessary permits, licenses and other approvals and Landlord agrees to cooperate with Tenant in Tenant's pursuit of all such necessary permits, licenses or approvals, and Tenant shall reimburse Landlord its reasonable costs to provide such cooperation.
- (b) Tenant's Antenna Facilities and any other facilities shall be installed, maintained, and operated in accordance with all state or federal or local or municipal statutes, ordinances, rules, or regulations now in effect, or that hereafter may be issued by the FCC or any other governing bodies which apply to Tenant's Approved Use of the Leased Premises.

#### **11. Interference.**

- (a) In the performance of its Approved Use, Tenant shall not damage or interfere with Landlord's Operations, including its radio frequency transmissions, or approved operations of Pre-Existing Tenants, provided that the equipment used by Landlord or Pre-Existing Tenants is operating within the technical parameters specified by its manufacturer and/or as defined by the FCC. In the event of any such interference, Tenant shall immediately cease such interference, except for brief tests necessary for the elimination of the interference, and until Tenant is able to resolve the problem. In the event Tenant cannot correct the interference, Tenant shall have the option to terminate this Lease, pursuant to *Section 12. Termination*. Tenant shall not be responsible for interference that results from a change in the operations of other tenants after the Commencement Date of this Lease.
- (b) Tenant acknowledges that Landlord may lease the Property, or any part of it, to other parties in close proximity to the Leased Premises, and Tenant agrees to work cooperatively with any such other parties, using accepted technical standards in accordance with FCC standards, to ensure that such other parties' use and Tenant's use will be compatible and will not cause interference with each other.
- (c) Landlord in no way guarantees to Tenant noninterference with Tenant's transmission operations provided, however, that in the event that any other party requests permission to place any type of additional antenna or transmission facility on the Property, the procedures of this Section shall govern to determine whether such antenna or transmission facility will interfere with Tenant's transmission operations.
- (d) In the event that Tenant or other tenants on the Property experience interference of their approved frequencies and they cannot reach agreement as to the cause and remedy of such interference, the RF Engineer shall determine such cause and remedy and Tenant shall abide by the RF Engineer's determination, subject to Tenant's right to terminate this Lease.

## **12. Termination.**

- (a) Except as provided herein, this Lease may be terminated upon sixty (60) days written notice to the other party without penalty or further liability, as follows:
  - (1) By either party, upon a material default of any other covenant or term hereof by the other party; which default is not cured within thirty (30) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties at law, in equity, or pursuant to any other provisions hereof), or if such cure cannot be completed within thirty (30) days, within such reasonable time as may be required, provided the defaulting party commences the cure within thirty (30) days of receipt of written notice of default and diligently pursues such cure to completion;
  - (2) By Tenant, in the event that:
    - a. Tenant is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the Antenna Facilities;
    - b. The Leased Premises are or become unusable under Tenant's design or engineering specifications for its Antenna Facilities, or the communications system to which the Antenna Facilities belong; or



- c. Tenant's transmission is interfered with by Landlord or its other tenants' equipment. Such right to terminate shall become void if Landlord cures such interference within thirty (30) days of receipt of written notice.
- (3) By Landlord, in the event that:
- a. Landlord reasonably determines, after review by an independent structural engineer, that the Property is structurally unsound, including but not limited to consideration of age of the Structure, damage or destruction of all or part of the Property from any source, or factors relating to condition of the Property;
  - b. Tenant fails to pay rent provided for in *Section 3. Rent* within thirty (30) days of Tenant's receipt of written notice from Landlord of a rent payment being overdue;
  - c. Tenant does not complete "initial" installation "or approved modifications" of its Antenna Facilities within one (1) year of the Notice to Proceed.
  - d. Upon 180 days prior written notice by the Landlord to Tenant if Landlord decides, for any reason, to redevelop and/or discontinue use of the Property and Structure in a manner inconsistent with Landlord's Primary Use.
- (b) If this Lease is terminated pursuant to subparagraph 12(a)(1), 12(a)(2)(a) or 12(a)(2)(c), rent shall be pro-rated to the termination date or the date on which all of Tenant's equipment is removed from the Leased Premises, whichever is later. The parties shall give notice of termination in accordance with Section 16 of this Lease. All rental paid for by Tenant prior to said termination date shall be retained by Landlord.
- (c) The parties agree that the Landlord will incur damages should Tenant terminate this Lease pursuant to subparagraph 12(a)(2)(b). However, the amount of damages incurred by the Landlord following Tenant's termination of this Lease pursuant to subparagraph 12(a)(2)(b) cannot be determined or measured by ordinary rules. For the purpose of liquidating the amount of damages, and not as a penalty, it is agreed that in case of the Tenant's early termination of this Lease, as permitted by subparagraph 12(a)(2)(b), the damages caused shall be and are hereby fixed, liquidated, and determined in the sum of 150% of the annual applicable rent for the year in which Tenant terminates.
- (d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety conditions or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Leased Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of liability to a government agency or third party, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Lease upon written notice to Landlord specifically identifying all such materials, conditions or matters relating to the Property.

### **13. Insurance.**

Tenant and all subcontractors shall obtain, as a minimum, the types and limits of insurance coverage as set forth in Exhibit "D". All policies called for herein shall become effective before Tenant undertakes any work under this Lease and shall remain in full force and effect as indicated by the Exhibit. Tenant shall furnish Landlord with an insurance certificate evidencing such insurance coverage prior to work commencing on said project.

### **14. Indemnity.**



Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by Landlord or for which the Landlord may be liable in the performance of this Lease, except to the extent those which arise from the negligence, or willful misconduct of Landlord, or its employees, agents or contractors. Tenant shall further defend and indemnify all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of the Tenant's Antenna Facilities on the Leased Premises, except to the extent such claims arise out of the negligence or willful misconduct of Landlord, its agents, employees, contractors and tenants.

Landlord agrees to defend, indemnify and hold harmless Tenant and its officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by Tenant or for which the Tenant may be liable in the performance of this Lease, except to the extent those which arise from the negligence, or willful misconduct of Tenant, or its employees, agents or contractors.

**15. Damage or Destruction.**

If the Leased Premises or any portion thereof is destroyed or damaged so as to materially hinder the effective use of the Leased Premises by Tenant through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord. In such event, all rights and obligations of the parties shall cease (except as to the Tenant's obligations under this Lease to remove Tenant's equipment and Antenna Facilities) as of the date of the notice to Landlord and Tenant shall be entitled to the reimbursement of any rent prepaid by Tenant. If Tenant elects to continue this Lease, then the rent shall abate for a period of one hundred eighty (180) days or until Tenant's equipment and Antenna Facilities are restored to the condition existing prior to the damage or destruction, whichever is earlier.

**16. Notices.**

All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or delivered by a nationally recognized overnight courier service, to the following addresses or to any other address of Tenant or Landlord that is given from time to time to the other party pursuant to this provision, regarding written notice:

If to Landlord: Rochester Public Utilities  
Attn: Buyer  
4000 East River Road NE  
Rochester, Minnesota 55906

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: Lease Compliance / Site # \_\_\_\_\_

**17. Representations and Warranties.**

- (a) Landlord represents that (i) it has full right, power, and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, subject to such liens of record; and (iii) Tenant shall have quiet enjoyment of the Leased Premises during the term of this Lease in accordance with its terms.
- (b) The parties acknowledge that this is a nonexclusive lease. Nothing in this Lease shall preclude Landlord from leasing other space on the Property to any other person or entity which may be in competition with Tenant, or any other party, subject to the conditions set forth in *Section 11. Interference*.
- (c) Tenant warrants that the individual signing and executing this Lease on behalf of Tenant has the requisite corporate power and authority to enter into and perform this Lease on behalf of Tenant. Landlord warrants that the individuals signing and executing this Lease on behalf of Landlord have the requisite corporate power and authority to enter into and perform this Lease on behalf of Landlord.
- (d) Landlord represents that it has no knowledge of any substance, chemical or waste on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation, as defined in Section 17(e) of this Lease. Landlord will be solely liable for and will defend, indemnify and hold Tenant, its agents and employees harmless from and against any and all direct claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the Property with respect to hazardous, toxic or dangerous materials from any and all sources other than those hazardous, toxic or dangerous materials introduced to the Property by Tenant. Tenant represents and warrants that its use of the Leased Premises herein will not generate and it will not store or dispose on the Property nor transport to or over the Property any hazardous substance, chemical or waste contrary to any applicable law or regulation. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such hazardous substance, and any damage, loss, expense, or liability resulting from the breach of this representation or from the violation of any applicable state or federal law by such release associated with Tenant's use of hazardous substances, including payment of all reasonable attorneys' fees, costs, and penalties incurred as a result thereof, except for any release caused by the negligence or willful misconduct of Landlord, its employees, or agents.
- (e) "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated 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 environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time. Landlord acknowledges Tenant's use of batteries and diesel fuel needed for back-up power and deems them acceptable as long as such batteries and fuel are used and disposed of in accordance with all applicable laws.

**18. No Liability on Landlord.**

Except due to Landlord's willful misconduct or negligence, Landlord shall not be liable for: (i) any damage to Tenant's equipment or Antenna Facilities, including but not limited to vandalism or malicious mischief caused by third parties, known or unknown, to Tenant's equipment or facilities, or (ii) for any lost revenue, business or profits of Tenant.

**19. Assignment.**

This Lease, or rights thereunder, may not be sold, assigned, or transferred in whole or in part, or subleased or sublicensed at any time by Tenant without the written consent of the Landlord, except to Tenant's parent, affiliates or subsidiaries, or subsidiaries of its parent, or any party that merges or consolidates with Tenant or Tenant's parent, or any party that purchases or otherwise acquires all or substantially all of Tenant's ownership interest or assets in the FCC market in which the Property is located. Any written consent required in this Paragraph will not be unreasonably withheld, conditioned or delayed. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity which provides financing for the purchase of the Antenna Facilities to be installed at the Leased Premises subject to Landlord's rights to retain the Tenant's Antenna Facilities and other improvements if Tenant fails to remove them as provided in this Lease. Tenant shall provide Landlord written notice of such assignments within thirty (30) days of execution.

**20. Condemnation.**

Landlord shall provide to Tenant notice of any condemnation proceedings within thirty (30) business days of receipt. In the event the whole of the Leased Premises is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises vests in the condemning authority. In event a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord (unless Landlord is the condemning authority), such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, Antenna Facilities, and leasehold improvements.

**21. Successors and Assigns.**

This Lease shall run with the Property. This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

**22. Surrender of Leased Premises.**

(a) All portions of the Antenna Facilities brought onto the Leased Premises by Tenant will be and shall remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the term or extension thereof. In the event that this

Lease is terminated or not renewed, Tenant shall have sixty (60) days from the termination or expiration date to quit peacefully and surrender possession of the Leased Premises in as good condition as when it was delivered to Tenant, reasonable wear and tear and casualty loss excepted. Tenant shall remove its equipment, personal property, Antenna Facilities, and leasehold improvements from the Property, and shall repair any damage to the Property caused by such equipment, all at Tenant's own cost and expense.

- (b) In the event that Tenant's Antenna Facilities and related equipment are not removed to the reasonable satisfaction of the Landlord within sixty (60) days from the termination or expiration date, the Landlord shall have the option to fully decommission the Antenna Facilities, have the Antenna Facilities removed, and repair the site and restore the property, and Tenant shall be responsible for the cost of such actions.

### **23. Marking and Lighting Requirements.**

- (a) Landlord acknowledges that it shall be responsible, at its sole cost and expense, for compliance with all building marking and lighting requirements that the Federal Aviation Administration ("FAA") may require with respect solely to the height of the Structure. The responsibility, however, is expressly limited to the requirements that would be required of an elevated water storage facility having no communications equipment installed on it, irrespective of Tenant's Antenna Facilities. Landlord shall indemnify and hold harmless Tenant from any fines or other liabilities caused by Landlord's failure to comply with such requirements for an elevated water storage facility Structure. Further, should the FAA cite Landlord, or in the event any claims are brought against Landlord because the Structure alone is not in compliance, as opposed to the Structure with Antenna Facilities, then Landlord shall indemnify Tenant for full costs, liabilities, damages and expenses, including reasonable attorney's fees. Further, if Landlord does not cure the conditions of noncompliance on the Structure within the time frame allowed by the citing agency, Tenant may terminate this Lease immediately without any further liability hereunder upon written notice to Landlord.
- (b) Tenant acknowledges that it shall be responsible at its sole cost and expense, for compliance with all building marking and lighting requirements that the FAA may require with respect to Tenant's Antenna Facilities. In the event the FAA determines that the Structure must be additionally marked, lighted, or in any way modified, due to the existence of Tenant's Antenna Facilities, Tenant shall have the option to mark, light or modify the Structure at its sole expense, or to terminate this Lease, pursuant to *Section 12. Termination*. Said marking, lighting and modifying shall be subject to prior written approval by Landlord, such approval not to be withheld without cause. Landlord shall approve or object to such plans within a reasonable period of time to allow timely compliance with FAA regulations.

### **24. RF Radiation Compliance.**

- (a) An RF Engineer chosen by the Landlord and agreed to by the Tenant shall perform a radiation survey of the Property following Tenant's initial RF transmissions on the Leased Premises. Tenant shall be responsible for all costs of such survey, to be paid within forty-five (45) days of receipt of a detailed invoice from Landlord.

- (b) Tenant shall implement all measures at the transmission site required by FCC regulations, including but not limited to posting signs and markings. Landlord shall cooperate with and permit Tenant to implement all reasonable measures in order for Tenant to fulfill its Radio Frequency exposure obligations. Landlord agrees that in the event any future party causes the entire site to exceed FCC Radio Frequency radiation limits, as measured on the Property, Landlord shall hold such future party liable for all such later-arising non-compliance.

**25. Noise Restrictions.**

Noise from Tenant's equipment shall not exceed the level allowed by the local jurisdiction ("Allowable Noise Level"), as measured at any location on neighboring property. Landlord will take noise level measurements from time to time to verify compliance. In the event it is found that Tenant's equipment exceeds the Allowable Noise Level, Landlord shall provide Tenant with written notice and Tenant shall take immediate steps to provide permanent reduction in the noise of its equipment to below Allowable Noise Level. If Tenant does not so reduce its measured sound level within sixty (60) days of receipt of written notice of event, said occurrence shall constitute an event of default as otherwise defined in *Section 14. Termination*.

**26. Miscellaneous.**

- (a) Each party agrees to furnish to the other, within thirty (30) days after notice of receipt of the request, such truthful estoppel information as the other party may reasonably request.
- (b) This Lease constitutes the entire agreement and understanding of the parties and supersedes any and all offers, negotiations, or other agreements of any kind with respect to its subject matter. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provisions of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- (c) This Lease shall be construed in accordance with the laws of the State of Minnesota. Any legal action may only be commenced and proceed in the relevant district court in Olmsted County, Rochester, Minnesota.
- (d) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- (e) Upon request by Tenant, Landlord agrees to execute a recordable Memorandum of this Lease.
- (f) Any terms and conditions contained in this Lease that by their sense and context are intended to survive the termination or expiration of this Lease shall so survive.

- (g) The submission of this Lease to any party for examination or consideration does not constitute an offer, reservation of or option for the Leased Premises based on the terms set forth herein. This Lease will become effective and binding only upon the handwritten legal execution and delivery hereof by Landlord and Tenant.
- (h) The Recitals set forth above and the terms and definitions therein are hereby incorporated in this Lease as though they were set forth in the body of the Lease.
- (i) Any claim, controversy or dispute arising out of this Lease not resolved within sixty (60) days following notice of the dispute shall be submitted first and promptly to mediation. Each party shall bear its own cost of mediation. If mediation does not result in settlement within forty-five (45) days after the mediator declares an impasse, either party may file any legal proceeding to enforce this agreement. The legal proceeding must be venued in Olmsted County, Minnesota.
- (j) Exhibits “A” through “D” listed below are hereby incorporated into this Lease by reference.

Exhibit “A”    *Legal Description*

Exhibit “B”    *Construction Drawings*

Exhibit “C”    *Site Access Procedure*

Exhibit “D”    *Insurance Requirements*

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease, the day and year first written above.

\_\_\_\_\_

**CITY OF ROCHESTER**

By \_\_\_\_\_

By \_\_\_\_\_  
Ardell Brede, Mayor

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

By \_\_\_\_\_  
Anissa Hollingshead, City Clerk

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

Approved as to form:

By \_\_\_\_\_  
Jason Loos, City Attorney

**ROCHESTER PUBLIC UTILITIES**

By \_\_\_\_\_  
Mark Kotschevar, General Manager

Attachment: Board Macro Site Lease (9806 : Macro Site Lease)



## Exhibit C

### Site Access Procedure

#### 1.0 REQUEST ACCESS

1.01 Request for access must be provided via email to [dklamerus@rpu.org](mailto:dklamerus@rpu.org) and must include the following information:

- 1) name and contact information of tenant
- 2) service ticket number
- 3) your relationship to tenant
- 4) description of work to be completed
- 5) length of time access is needed
- 6) date and time of access
- 7) your contact information.

#### 1.02 Emergencies

1. Contact RPU Water Operations at 507.273.5030 or Electric System Operations at 507.280.1697 after submitting email request for access. Inform caller that an email request has been submitted.
2. Under certain conditions, water operations personnel may not be available, in which case RPU will use their best judgment to determine if there is another way to grant access to the agent, or to deny or delay access.

**Important: The police will be called to the site if a written request is not made to RPU prior to entry.**

RPU staff will verify the request and arrange to meet agent on site and allow for access after checking for proper ID.

#### 1.03 Prior to arriving to site:

- a) Authorized agents must notify RPU Water Operations (507.273.5030) approximately 30 minutes before arriving to notify RPU staff of the time they will be arriving.

#### 1.04 While at site:

- a) Authorized agents are required to perform their necessary work on the site in a manner that does not compromise site security. This includes, but is not limited to, securing all doors and gates before leaving the site.
- b) RPU employees will determine whether or not they will need to monitor the activity at the site. If RPU employee believes that the agent is not there for a

legitimate business reason, the employee should get to a safe area and call 911 to have police confront the agent and remove them if necessary.

1.05 Leaving site:

- b) Authorized agents must notify RPU Water Operations (507.273.5030) when leaving the site.

## **2.0 IDENTIFICATION PROCEDURES**

- 2.01 Tenant's employees, contractors or agents seeking entrance to a remote facility are required to show a valid photo ID. RPU employee allowing them access will forward the name and phone number of the entrant to the RPU Water Infrastructure Engineer to confirm that access should be granted.

## **3.0 SITE SAFETY**

- 3.01 Tenant's employees, contractors or agents seeking entrance will be required to complete a Safety Acknowledgement Water Facilities Form provided by the Landlord each time access is requested.
- 3.02 Contractor must provide required personal protective equipment including but not limited to fall protection equipment as appropriate for the tasks to be completed onsite.
- 3.03 Contractor must have the ability to summon emergency assistance (such as a mobile phone) if needed as these sites are seldom equipped with telephones.

## **4.0 FACILITY LOCKS**

- 3.01 All RPU facilities are secured with high-security locks utilizing high-security keys.
  - a) No other locks are permitted, and all such other locks will be removed and disposed of.
  - b) RPU may make some exceptions in cases where, for the convenience of RPU staff, contractor locks will be allowed to be "daisy-chained" onto a RPU water facility. These exceptions will be on a case by case basis, and the decision to allow this will be made by RPU Manager of Water Operations.
  - c) For sites that are undergoing construction, RPU will install construction locks and give contractors construction keys.

## **5.0 RPU CONTACTS**

Normal and emergency access after normal business hours:

Normal Business Hours	507.273.5030	5:00 AM – 12:30 AM
After Business Hours	507.280.1696	12:31 AM – 4:59 AM

Any access granted between the hours of 12:31 AM to 4:59 AM will be billed at the current RPU overtime rate.

**Exhibit D**  
Insurance Requirements

Tenant and all subcontractors while working hereunder shall obtain and maintain the following insurance to protect the parties against claims, demands, actions, judgments, expenses, and liabilities that may arise out of or result from Tenant's use of the Leased Premises:

- a. Tenant shall provide at least 30-days' prior written notice of cancellation and/or non-renewal to Landlord of any required coverage that is not replaced.
- b. Workers' compensation and employer's liability of \$500,000 per accident/ per disease, per employee/per disease, policy limits.
- c. Commercial Liability Insurance with limits of \$1,000,000 each occurrence/\$2,000,000 aggregate for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the negligent actions of the Tenant, its officers, employees or agents during the term of the Agreement. Products and completed operations coverage is to be included within the required limits with coverage for a minimum of two years after construction is completed.
- d. The liability limits may be afforded under the Commercial Policy, or in combination with an umbrella or excess liability policy provided coverages afforded by the umbrella or excess policy are not less than the underlying liability coverages.
- e. Commercial auto insurance with limits of \$1,000,000 each occurrence for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the negligent actions of the Tenant, its officers, employees or agents, including hired and non-owned vehicles, during the term of the Agreement. **If such insurance contains a general aggregate limit, the general aggregate limit shall not be less than \$2,000,000.**
- f. The required liability insurance policies shall include the City of Rochester as an additional insured for claims from work conducted pursuant to this Agreement. Tenant's required liability insurance shall be primary to any insurance held by the City of Rochester. Landlord's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and, (iii) not exceed Tenant's indemnification obligation under this Agreement, if any.
- g. The Tenant shall provide, prior to tenancy, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A- or better by Best Insurance Guide) eligible to do business in the state of Minnesota, which includes all coverage required and named as follows:

City of Rochester  
Acting Through Its Public Utility Board  
4000 East River Road NE  
Rochester MN 55906-2813



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the agreement for:

Macro Site Lease

And to approve a resolution authorizing the Mayor and City Clerk to execute the agreements, and authorize the General Manager, after consulting with the City Attorney, to approve future amendments or subsequent agreements resulting in non-material changes consistent with the Lease agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of November, 2018.

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President

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Secretary

## FOR BOARD ACTION

Agenda Item # (ID # 9801)

Meeting Date: 11/27/2018

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**SUBJECT: Master Small Cell Wireless Collocation Agreement**

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**PREPARED BY: Mona Hoefl**

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ITEM DESCRIPTION:

In collaboration with counsel, RPU has developed a Master Small Cell Wireless Collocation Agreement and License Supplement for small cell installations on RPU poles. The master agreement outlines the terms and conditions that apply to all installed premises while each premise will utilize the License Supplement and includes site specific information like location, construction drawings and equipment. These documents will become the standard form for all parties interested in installing small cell technology on RPU poles and includes the following fees:

Master Agreement Fee \$5,000 one time

Supplement License Fee - \$1,550 per premise

Rent - \$900 per premise

Given the nature of the telecommunications market, like equipment modifications, staff is also asking the board to delegate authority to the General Manager, after consulting the City Attorney, to approve non-material changes, future amendments or subsequent agreements that are consistent with the master agreement.

Following approval, RPU will be executing agreements with ExteNet Systems, Inc. and Zayo Group LLC. Both Zayo and ExteNet are third party providers using fiber connections to communication service providers.

The City Attorney has been involved in the negotiations and has reviewed the agreement.

UTILITY BOARD ACTION REQUESTED:

Board approval of the standard form Master Small Cell Wireless Agreement and (1) approve a resolution authorizing the Mayor and City Clerk to execute the agreements and (2) authorize the General Manager, after consulting the City Attorney, to approve future amendments or subsequent agreements resulting in non-material changes consistent with the master agreement.



### Master Small Cell Wireless Collocation Agreement

This Master Small Cell Wireless Collocation Agreement (the “**Agreement**”) made this \_\_\_\_\_ between the City of Rochester, Minnesota, a Minnesota municipal corporation, acting by and through its Public Utility Board (“RPU”), with its principal office located at 4000 East River Road NE, Rochester MN 55906, hereinafter designated collectively the “Licensor” or individually as RPU and [ENTER] with its principal offices at [ENTER], hereinafter designated Licensee. Licensor and Licensee are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

#### RECITALS

**WHEREAS**, this Agreement shall apply to the collocation of Small Wireless Facilities (as hereinafter defined) located within the City of Rochester, Minnesota. “Collocate” or “collocation” shall have the meaning provided in Minnesota Statutes, Section 237.162, subd. 10; and

**WHEREAS**, RPU owns or controls certain distribution, utility and, light poles (“**Poles**”), in the public rights-of-way (“**ROW**”), that may or may not be designed to support a Small Wireless Facility; and

**WHEREAS**, Licensor has agreed to provide this license to allow for collocation of Small Wireless Facilities licensed by the Federal Communications Commission (“**FCC**”) to Licensee; or a third party customer of Licensee; and

**WHEREAS**, Licensee acknowledges its obligations to comply with the City of Rochester, Minnesota, (“City”) Ordinance Chapters 25 (Public Right-of-Way Management), 70 (Concrete Sidewalks, Driveways, Curbs and Gutters), 71 (Curbs, Curb Cuts, and Driveways), 72 (Maintenance and Repair of Sidewalks), and 73 (Miscellaneous Street and Sidewalk Regulations) and the City of Rochester Zoning Ordinance and Land Development Manual, and such other ordinances and rules that the City or RPU may amend and adopt in the future; and

**WHEREAS**, Licensor and Licensee acknowledge their obligation to comply with Minnesota Statutes Sections 237.162-.163;

**WHEREAS**, Licensor and Licensee desire to enter into this Agreement to define the general terms and conditions of collocation on its poles, and Licensee’s desire to install, maintain and operate Small Wireless Facilities on Licensor’s Poles; and

**WHEREAS**, Licensor and Licensee acknowledge that they will enter into a License supplement (“**Supplement**”), in substantially the form attached hereto as **Exhibit A** (“License Supplement”), with respect to each particular location or site on which the Licensor agrees to allow Licensee to install, maintain, and operate communications equipment on existing poles; and

Attachment: Board Master Small Cell Collocation Agreement Final (9801 : Master Small Cell Wireless Collocation Agreement)



**WHEREAS**, in the event that Licensee intends to construct new Licensee-owned poles in the ROW, Licensee will submit permit applications to the City pursuant to Minnesota Statutes Sections 237.162.163 and City requirements;

**WHEREAS**, this Agreement is not exclusive and Licensor reserves the right to grant permission to other eligible and qualified entities to collocate Small Wireless Facilities on Licensor's Poles.

**NOW THEREFORE**, in consideration of the grant of permits to collocate on Licensor's Poles, and the mutual covenants contained herein, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

### **1. Municipal Property Subject to License.**

**a. Poles and Property.** Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, and all applicable Licensor ordinances and standards, Licensor agrees to License to Licensee certain space described in the applicable Supplement upon Licensor's Poles and/or surrounding real and/or personal property (Licensor's Poles, personal property, and immediate surrounding public right-of-way are hereinafter sometimes collectively referred to as the "**Property**"), for the installation, operation and maintenance of Licensee's Small Wireless Facility; together with the non-exclusive right of access, subject to City of Rochester Ordinance, seven (7) days a week, twenty four (24) hours a day, over and through the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of Licensee's Small Wireless Facility.

**b. Premises.** The space licensed by Licensor to Licensee described herein or in the applicable Supplement is hereinafter collectively referred to as the "**Premises.**" The Premises may include, only with specific approval in writing and in advance, space on the Poles sufficient for the installation, operation and maintenance of antennas and other equipment (the "**Antenna Space**") as described herein or in the Supplement.

**c. Small Wireless Facility.** For purposes of this Agreement, the term "**Small Wireless Facility**" means (1) a wireless facility, that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or (2) a micro wireless facility as defined by Minnesota Statutes, Section 237.162, subd. 14.

**d. Ownership of Poles.** All Poles used by Licensee under this Agreement, including any Replacement Pole or New Pole installed by Licensee, shall remain and/or become the property of

Licensor, and any cost and/or expense incurred by the Licensee for changes to existing Poles,, conduits, conductor pull boxes, facilities, and appurtenances or related equipment, or installation of any Replacement Poles or New Poles, conduits, conductor pull boxes, facilities, or appurtenances or related equipment, under this Agreement shall not entitle Licensee to ownership of said Poles, conduits, conductor pull boxes or facilities or appurtenances or related equipment.

**e. Condition of Property/Pole Construction.** Licensor makes no promise of fitness and shall deliver the Premises to Licensee in an “as-is, with all faults” condition to Licensee. In the event an installation would require, based upon the Licensor’s engineering requirements related to an existing Pole, a Replacement Pole, Licensee shall remove the existing pole and deliver to Licensor at Licensor’s direction and replace with a Replacement Pole in compliance with **Exhibit A** (License Supplement) and perform construction of its improvements in a manner which leaves the facility clean and free of debris upon completion of access.

**f. No Real Property Interest Granted.** Neither this Master Small Cell Wireless Collocation Agreement nor any Supplement creates a lease, possessory interest, easement, franchise, or any other real property interest in any part of the Premises. In the absence of an executed Supplement, Licensee has no right to use the Premises for any purpose.

**g. Reservation of Right.** If Licensor determines that Licensee’s proposed use is contrary to generally applicable and reasonable health, safety, and welfare regulations, Licensor reserves the right, in its sole discretion, to exclude any of Licensor’s Poles, conduits, conductor pull boxes, appurtenances, and/or Licensor’s Property from use by Licensee.

## 2. Licensee’s Use.

**a. Primary Use of Poles.** The primary use and purpose of the Poles and Licensor’s Property, inclusive of the Premises, is to provide for electricity, street lighting and the health, safety and welfare of the citizens of the Licensor and the general public. Licensor’s operations and use of the Poles and Licensor’s Property for Licensor’s communications use take priority over Licensee’s use thereof.

**b. Priority of Poles.** Licensee agrees that the following priorities of use, in descending order, shall apply in the event of interference with the Licensor’s communications use for emergency public safety needs, Premises repair or reconditioning, or other conflict while this Agreement is in effect, and Licensee’s use shall be subordinate accordingly:

- (1) Licensor’s use;
- (2) Public safety agencies, including law enforcement, fire, and ambulance services that are not related to Licensor;
- (3) Other governmental agencies where use is not related to public safety;
- (4) Pre-existing licensees (if any);
- (5) Licensee’s Permitted Use.

**c. Public Threat.** In the event there poses an immediate threat of substantial harm or damage to the health, safety and welfare of the public and/or Property/Premises, as solely

determined by Licensor (“**Public Threat**”), the Licensor may take any and all actions the Licensor determines are required to address such Public Threat provided that promptly after such actions that affect the Premises, and in no event later than seventy-two (72) hours after such actions, Licensor gives written notice to Licensee of Licensor’s emergency actions. If Licensor determines that the conditions of a Public Threat would be benefited by cessation of Licensee’s operations of the applicable Licensee’s Small Wireless Facility, Licensee shall immediately cease its operations on the Premises upon notice from Licensor, and the Term (as herein defined) of the applicable Supplement shall terminate.

**d. Permitted Uses.** Subject to the terms, covenants and conditions of this Agreement, Licensee’s Small Wireless Facility may be used solely for the following purposes: (i) the transmission and reception of wireless communication signals, and uses incidental thereto, including, but not limited to, wireless telephone and internet services (“**Licensee’s Wireless Services**”); and (ii) for the purpose of installing, repairing, maintaining, removing and operating Licensee’s Small Wireless Facility in accordance with this Agreement and in accordance with the transmission and reception of wireless communication signals authorized for use by Licensee by the FCC (“**Permitted Uses**”). The use of the Licensor’s Poles, and/or Licensor’s Property by the Licensee is non-exclusive, and Licensor reserves the right to allow Licensor’s Poles, and Licensor’s Property to be used by others, provided they do not interfere with Licensee’s use of Licensee’s Small Wireless Facility. Licensee shall construct, install, maintain, repair, operate and use each Premises (as hereinafter defined) only in accordance with the terms, covenants and conditions of this Agreement, good engineering practices and in compliance with all applicable FCC, and other federal, state and local ordinances, statutes, laws and regulations.

**e. Non-Exclusive Use.** Licensee shall have the non-exclusive right, at its sole cost and expense, to use each Premises, as identified in each individual Supplement, for the purpose of constructing, installing, maintaining, repairing and operating Licensee’s Small Wireless Facility consistent with the terms of this Agreement.

### 3. License Supplement Application

**a. License Supplement Application.** Before Licensee shall use any of Licensor’s Premises under this Agreement, Licensee shall submit an application in the form attached hereto as **Exhibit B** (“License Supplement Application”) and shall comply with all the terms, covenants and conditions of this Agreement, including the requirements as described in the latest version of Licensor’s Small Cell Facility Construction Criteria, current version attached hereto as **Exhibit C**.

**b. Construction Plans.** With each Application and Supplement, Licensee shall furnish Licensor detailed Construction Plans and Specifications for each individual Premises (“**Plans**”), together with necessary maps, indicating specifically the Poles, Licensee proposes be used for Licensee’s Small Wireless Facility, equipment necessary for Licensee’s use, including any existing Poles to be replaced (“**Replacement Pole**”), or any additional Pole that Licensee proposes to install (“**New Pole**”), and any new installations for utility transmission conduit, pull boxes, and appurtenances. Licensee shall provide Licensor with one (1) set of the Plans consisting of the following:

- (i) For the initial installation of the applicable Licensee's Small Wireless Facility and for any and all subsequent revisions and/or modifications thereof, or additions thereto;
- (ii) GIS, Line or CAD drawings showing the location and materials of the planned installations of the applicable Licensee's Small Wireless Facility and a Professional (Licensed) Engineer's Estimate of all materials and construction methods;
- (iii) Diagrams, Shop Drawings and Pictures of the applicable Licensee's Small Wireless Facility;
- (iv) A complete and detailed inventory of all of Licensee's antennas, cable and other equipment and personal property of Licensee's Small Wireless Facility to be installed on the Premises;

All Plans shall be easily readable and subject to the written approval by Licensor prior to installation of the applicable Licensee's Small Wireless Facility. Should the Plans need to be revised based on the comments provided by Licensor and/or Licensor's structural engineer, no construction of the applicable Licensee's Small Cell Facility shall commence until final approval has been granted by Licensor. The Plans shall have affixed to them the signature of Licensee's Professional Engineer who shall be duly licensed in the State of Minnesota.

**d. Wireline Permitting Requirements.** In the event any backhaul fiber, electrical facilities or other cable or fiber/wire facilities in the public rights-of-way are necessary to operate the Licensee's Small Wireless Facilities, Licensee shall obtain the necessary permits and otherwise comply with all applicable local law, including but not limited to City of Rochester Ordinance Chapters 25 (Public Right-of-Way Management), 70 (Concrete Sidewalks, Driveways, Curbs and Gutters), 71 (Curbs, Curb Cuts, and Driveways), 72 (Maintenance and Repair of Sidewalks), and 73 (Miscellaneous Street and Sidewalk Regulations) and such other ordinances and rules that the City or RPU may amend and adopt in the future. Notwithstanding the above, all backhaul fiber, electrical facilities, or other cable or fiber/wire facilities in the public rights-of-way necessary for the operation of Licensee's Small Wireless Facilities, shall, to the extent practical, be installed underground by use of direction boring or within the applicable Pole. Electrical meters, if separately metered, will be separate from the pole.

**e. Engineering Study.** Licensee must, at the time of Application and at any future time as requested by Licensor, obtain and submit to Licensor a structural engineering study carried out by a qualified structural engineer, showing that the Pole or Poles are able to support the Licensee's Small Wireless Facility ("**Structural Study**"). Said Structural Study must be signed by a Professional Engineer licensed in Minnesota. If the Structural Study finds that any Pole is inadequate to support the proposed loads of Licensee's Small Wireless Facility, Licensee shall not install the Licensee's Small Wireless Facility and the Application shall be denied.

**f. Make-Ready Costs.** The Licensee shall be responsible for Licensor's reasonable make ready costs associated with any New or Replacement Pole. These costs, due at the time of execution of the Supplement, include engineering, materials, labor and overheads.

**g. Inconsistent Use.** If, in the judgment of Licensor, Licensee's proposed use of the Licensor's Poles, or Licensor's Property, is inconsistent with the Licensor's uses thereof and does not comply with the terms, covenants or conditions of this Agreement, or any of the Licensor's ordinances, rules, regulations, the Licensor, in its sole discretion, shall have the right to deny the Application of the Licensee. In such an event, Licensor shall notify Licensee in writing.

#### **4. Installation of Licensee's Small Wireless Facility.**

**a. Construction Scheduling.** At least ten (10) business days prior to Licensee's construction mobilization for installation of Licensee's Small Wireless Facility for the applicable Premises, Licensee shall conduct a meeting ("**Pre-Construction Meeting**" or "**Pre-Con Meeting**") with Licensor and all applicable contractors on the Premises or other location as agreed upon and at a minimum the meeting shall be attended by a representative of Licensor and Licensee's contractors and all of the parties involved in the installation of Licensee's Small Wireless Facility.

**b. Construction Inspection.** All construction activity shall be subject to inspection and approval by the Licensor's Construction Engineer. Inspection may be performed at any time during the course of the construction activity reasonably determined by Licensor, at Licensee's expense. Construction work performed without approval of Licensor will not be accepted and shall be removed or uninstalled by the Licensee, at Licensee's sole expense within 30 days written notice by Licensor of such violation. Licensee shall be solely responsible for all reasonable costs associated with said inspection and approval of the installation of Licensee's Small Wireless Facility by Licensor and/or its engineers.

**c. Construction Timeframe.** All construction activity must be completed as shown on the approved License Supplement Application, including all attachments, within one (1) year of the Notice to Proceed, or the site shall revert to unoccupied status. Licensee shall not be entitled to any rent refund for failure to complete within this time.

**d. Exposed Licensee's Small Wireless Facility.** All of Licensee's Small Wireless Facility equipment that is to be affixed to a Pole which has exterior exposure shall be as close to the color of the Pole as is commercially available to the Licensee. For exposed cables, wires or appurtenances, Licensor reserves the right to require Licensee to provide cables, wires or appurtenances in manufactured colors which are commercially available, in lieu of painting.

**e. Damage by Licensee of Pole and/or Property.** Any damage to the Premises or the Property, or any other of Licensor's Poles, structures or equipment, caused by Licensee in any manner shall be repaired or replaced at Licensee's sole cost and expense and to Licensor's satisfaction within thirty (30) days of written notice by Licensor to Licensee setting forth the required repairs. Licensor may elect to make repairs or replacements at Licensee's sole expense.

**f. As-Built Drawings.** Within thirty (30) days after construction of a Small Wireless Facility, Licensee shall provide Licensor with an "As-Built" drawing in electronic file format compatible with Licensor's file system, which shall show the actual location of all Licensee's Small Wireless Facility equipment. Said drawings shall be accompanied by a complete and

detailed site survey of the Property and an inventory of all Licensee's Small Wireless Facility equipment.

**g. Permits for Installation.** Licensee is required to obtain from Licensor, or any other applicable governing agency, any and all permits required for a complete installation of Licensee's Small Wireless Facility or any utilities necessary for the operation of Licensee's Small Wireless Facility, at Licensee's sole cost and expense. Applicable Ordinances include, but are not limited to, City of Rochester Ordinance Chapters 25 (Public Right-of-Way Management), 70 (Concrete Sidewalks, Driveways, Curbs and Gutters), 71 (Curbs, Curb Cuts, and Driveways), 72 (Maintenance and Repair of Sidewalks), and 73 (Miscellaneous Street and Sidewalk Regulations). Applicable fees for any permits shall be borne by Licensee and Licensee shall be bound by the requirements of said permits.

## 5. Maintenance and Relocation

**a. Licensor's Reservation.** Licensor reserves the right to take any action it deems necessary, in its sole and reasonable discretion, to repair, maintain, alter, or improve the Property in connection with Licensor's Operations.

### b. Reconditioning Work.

- i. From time to time, Licensor paints, reconditions, or otherwise improves or repairs the Premises in a substantial way ("**Reconditioning Work**"). Licensor shall reasonably cooperate with Licensee to carry out Reconditioning Work activities in a manner that minimizes interference with Licensee's Permitted Use.
- ii. Except in cases of emergency, prior to commencing Reconditioning Work, Licensor shall provide Licensee with not less than 30 days prior written notice thereof. Upon receiving such notice, it shall be the sole responsibility of Licensee to provide adequate measures to cover or otherwise protect Licensee's Small Wireless Facilities from the consequences of such activities, including but not limited to paint and debris fallout. Licensor reserves the right, when reasonably necessary, to require Licensee to remove all Small Wireless Facilities from the Premises during Reconditioning work.
- iii. During Licensor's Reconditioning Work, Licensee may maintain a temporary communications facility on the Property or, after approval by Licensor, on any land owned or controlled by Licensor in the immediate area of the Property. If site will not accommodate the temporary communications facility, it shall be Licensee's responsibility to locate auxiliary sites.
- iv. Licensee may request a modification of Licensor's procedures for carrying out Reconditioning Work in order to reduce the interference with Licensee's



Approved Use. If Licensor agrees to the modification, Licensee shall be responsible for all incremental cost related to the modification.

**c. Replacement Work.** If the Poles need to be replaced (“**Replacement Work**”), Licensor shall provide Licensee with at least thirty (30) days’ written notice to remove its equipment. Licensor shall also promptly notify Licensee when the Poles have been replaced and Licensee may re-install its equipment. Licensee’s reinstallation shall be complete within 60 days of said notice. During Licensor’s Replacement Work, Licensee may maintain a temporary Small Wireless Facility on the Property, or after approval by Licensor, on any land owned or controlled by Licensor in the vicinity of the Property. If the Property will not accommodate Licensee’s temporary Small Wireless Facility or if the Parties cannot agree on a temporary location, the Licensee, at its sole option, shall have the right to terminate the applicable Supplement upon thirty (30) days written notice to Licensor.

**d. Repair Work.** If the Poles need to be repaired due to storm or other damage (“**Repair Work**”), Licensor shall notify Licensee to remove its equipment as soon as possible. In the event of an emergency, Licensor shall contact Licensee by telephone at Licensee’s Network Operations Center at 1-888-404-9296 within 24 hours after removal of Licensee’s Equipment. Once the Poles have been replaced or repaired, Licensor will promptly notify Licensee it can reinstall its equipment, such reinstallation to be completed within 60 days. During Licensor’s Repair Work, Licensee may maintain a temporary Small Wireless Facility on the Property, or after approval by Licensor, on any land owned or controlled by Licensor in the vicinity of the Property. All cost associated with any Repair Work shall be the sole responsibility of the Licensee, except to the extent caused by third parties or the Licensor.

**e. Relocation.** Nothing in this Agreement shall be construed to prevent City or RPU from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any Poles, water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

- i. Relocation for the City or RPU.** The Licensee shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate, protect, support, temporarily disconnect, any property of Licensee located in the public right-of-way in connection with: (1) a present or future Licensor use of the public right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way. If Licensee fails to permanently remove, and relocate and protect, support, temporarily disconnect, relocate, or remove any of its property as duly requested by RPU within a reasonable period of time, RPU may perform such requested action or actions, and Licensee shall promptly reimburse RPU its actual costs thereof.
- ii. Relocation for a Third Party.** The Licensee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as

necessary any property of the Licensee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Licensee is given reasonable advance written notice to prepare for such changes. The Licensee may require such payment in advance. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days in the event of a temporary relocation and no less than ninety (90) Days for a permanent relocation.

**f. Maintenance by Licensee.** Licensee shall, at its own cost and expense, maintain the Small Wireless Facilities in good and safe condition, and in compliance with applicable fire, health, building, the National Electrical Code, National Electrical Safety Code and other life safety codes. The Licensee shall obtain from the Licensor any and all permits required for the purposes of maintaining the installation. Applicable fees for any permits shall be borne by the Licensee and the Licensee shall be bound by the requirements of said permits. Licensee shall provide a report, to Licensor, every three years detailing the structural condition of Licensee’s Small Wireless Facilities. Such report shall be in a form acceptable to the Licensor and shall be signed by a professional engineer licensed in Minnesota certifying the equipment was inspected.

**g. Alterations or Modifications by Licensee.** Licensee may not add, change, modify or alter any of Licensee’s Small Wireless Facilities from that set forth and/or shown on the applicable Plan or as then currently constructed, without the prior written approval of the Licensor, which approval shall not be unreasonably withheld, conditioned or delayed. Licensee agrees to reimburse Licensor for all reasonable costs incurred by the Licensor in connection with any alteration, modification, or addition to, Licensee’s Small Wireless Facility pursuant to this paragraph, including but not limited to plan review, structural review, site meetings, inspection time, and as-built updating because of Licensee’s changes, and fees for drafting and and/or reviewing documents.

## 6. Electrical.

Licensee may furnish and install an electric meter pedestal, of a design and in a location approved by the Licensor, for the measurement of electrical power used by Licensee’s Small Wireless Facility. Licensee shall be responsible for the Licensor’s cost to install the meter.

In the event that electrical services are not separately metered, Licensor will calculate projected annual electrical usage based on proposed equipment and that amount shall be added to the rent due under each Supplement, pro-rated for Supplements with Commencement Dates other than January 1. The amount of any such annual fee shall be set forth in each Supplement. Licensor shall make an adjustment to the electrical reimbursement under the Supplement at any point during the term of the Supplement, as long as reasonable advance notice is provided to Licensee containing a breakdown of the added actual cost of electrical service (above the current amount paid) resulting from the electrical service that is being provided by Licensor.

Licensee may be permitted at any time during the Term (as defined herein) of each Supplement, to install, maintain, and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, along with all reasonably related

equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by Licensor.

## 7. Term and Rental.

**a. Term.** This Agreement shall be for a term of 10 years commencing on \_\_\_\_\_, 2018 (“**Commencement Date**”), and shall expire \_\_\_\_\_, 2028 (“**Initial Term**”). Each Supplement shall have a term no greater than five years.

**b. Rental.** The initial rent payment, as outlined in the Supplement, shall be paid within 30 days following full execution of the Supplement, at which time rental payments shall commence and be due at a total annual rental of \$[enter] 900.00 (2018 rate) (the “Annual Rental”), due in advance, on or before January 1. Rent on Supplements with a Commencement Date other than January 1, shall be pro-rated to the end of the year of the Commencement Date on a monthly basis. Commencing January 1, 201x, and on January 1st of each subsequent year, the Rent shall be increased by 3%.

**c. Payment of Rent.** Upon agreement of the Parties, Licensee may pay rent by electronic funds transfer and in that event, Licensor agrees to provide to Licensee bank routing information for that purpose upon request of Licensee.

**d. Late Payment.** Fees for late payment will be calculated based on RPU approved policy at the time of the late payment.

**e. Agreement Fee.** Licensee shall pay to the Licensor a nonrefundable one time Agreement fee in accordance with the attached Fee Schedule, Exhibit D, to cover the Licensor’s ordinary processing and other administrative costs of this Agreement, which shall be paid within 30 days of execution of this Agreement.

**f. Supplement Application Fee.** Licensee shall pay to Licensor a nonrefundable License Supplement Fee in accordance with the Fee Schedule attached Exhibit D to cover the Licensor’s costs to review and administer each License Supplement Application, which shall be paid upon submission of each License Supplement Application. The Licensor will not be obligated to begin its review of any License Supplement Application until the License Supplement Fee is paid.

## 8. Extensions and Renewal.

**a. Supplement Extensions.** Each Supplement may be extended for one (1) additional five (5) year term by giving written notice of the intent to extend at least ninety (90) days prior to the end of the then current term. All extensions, regardless of effective date will terminate at the end of the Initial Term of this Agreement unless a renewal agreement is executed by both parties. The initial term and all extensions under a Supplement shall be collectively referred to herein as the “Term.”

**b. Renewal.** If Licensee desires to renew this Agreement for an additional term, it shall, not less than one hundred eighty (180) days before expiration of the Initial Term of this Agreement, give written notice to the Licensor requesting renewal. Licensee and Licensor agree to negotiate in good faith terms acceptable to both Parties for the renewal of this Agreement. Nothing in this Agreement is intended to or does create a legally binding obligation on either Party to renew this Agreement or to reach definitive renewal terms. Each Party acknowledges that if negotiations do not result in definitive renewal terms, then no renewal term is granted and neither Party is entitled to any compensation from the other Party for any reason connected with the negotiations or their termination.

**9. Governmental Approvals.** Licensee shall use the Premises for the purpose of constructing, maintaining, repairing and operating a Small Wireless Facility and uses incidental thereto. Licensee shall have the right, without any increase in rent, to replace, repair with like materials, or otherwise reasonably modify its, equipment, antennas and/or conduits or any portion thereof, and the frequencies over which the equipment operates, only if such the equipment, antennas, or conduits are specified on any exhibit attached to a Supplement, during the Term. It is understood and agreed that Licensee's ability to use the Premises is contingent upon Licensee obtaining after the execution date of each Supplement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory analysis that will permit Licensee use of the Premises as set forth above. Licensor shall cooperate with Licensee in its effort to obtain the Governmental Approvals, Licensee shall have the right to terminate the applicable Supplement if: (i) any of the applications for Governmental Approvals is finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that the Governmental Approvals may not be obtained in a timely manner; Notice of Licensee's exercise of its right to terminate shall be given to Licensor in accordance with the notice provisions set forth in Paragraph 18 (Notices) and shall be effective 90 days after receipt of that notice by Licensor, or upon such later date as designated by Licensee. All rentals paid to the termination date shall be retained by Licensor. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each Party to the other thereunder. Otherwise, the Licensee shall have no further obligations for the payment of rent to Licensor for the terminated Supplement.

**10. Indemnification.** To the fullest extent permitted by law, Licensee agrees to defend, indemnify and hold harmless Licensor, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, arising out of Licensee's negligence or willful misconduct. Licensee's indemnification obligation shall apply to Licensee's customer's, contractors, subcontractors, or anyone directly employed or hired by Licensee, or anyone for whose acts Licensee may be liable, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the Licensor, or its employees, contractors or agents. Licensor will provide Licensee with prompt, written notice of any written claim covered by this indemnification provision; provided that any failure of Licensor to provide any such notice, or to provide it promptly, shall not relieve Licensee from its indemnification obligations in respect of such claim, except to the extent Licensee can establish actual prejudice and direct damages as a result thereof. Licensor will cooperate with Licensee in

connection with Licensee's defense of such claim. Licensee shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of Licensor and without an unconditional release of all claims by each claimant or plaintiff in favor of Licensor. The indemnity obligation shall survive the completion or termination of this Agreement.

## 11. Insurance.

**a. Waiver of Subrogation.** To the extent allowed by law, Licensee hereby waives and releases any and all rights of action for negligence against Licensor which may hereafter arise on account of damage to Licensee's property, resulting from any fire, or other casualty of the kind covered by standard insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by Licensee. This waiver and release shall apply between the Parties and shall also apply to any claim asserted as a right of subrogation. All such policies of insurance obtained by Licensee concerning its property shall waive the insurer's right of subrogation against Licensor.

**b. General Liability.** Licensee agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$2,000,000 per occurrence; \$4,000,000 annual aggregate, for bodily injury (including death) and for damage or destruction to property. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. Licensee shall add the Licensor as an additional insured.

**c. Automobile Liability.** Licensee shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum combined single liability limit of \$2,000,000 per occurrence.

**d. Workers' Compensation.** Licensee agrees to provide workers' compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. Licensor shall also carry employers' liability insurance with minimum limits as follows: \$500,000 for bodily injury by disease per employee; \$500,000 aggregate for bodily injury by disease; and \$500,000 for bodily injury by accident.

### e. Additional Insurance Conditions.

(i) Licensee shall deliver to Licensor a certificate of insurance as evidence that the above coverages are in full force and effect.

(ii) Licensee's policies shall be primary insurance and non-contributory to any other valid and collectible insurance available to Licensor with respect to any claim arising under this Agreement.

(iii) Licensee's policies and certificate of insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days' advanced written notice to Licensor, or ten (10) days' written notice for non-payment of premium.

**12. Limitation of Liability.** Except for indemnification pursuant to Paragraphs 10 (Indemnification) and 22 (Environmental), or a violation of law, neither Party shall be liable to the



other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

**13. Interference.** Licensee agrees to install Equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of Licensor or other licensees of the Property which existed on or within close proximity to the Property prior to the date the applicable Supplement is executed by the Parties. In the event any after-installed Licensee's equipment causes such interference, and after Licensor has notified Licensee in writing of such interference, Licensee will take all steps necessary to correct and eliminate the interference, including but not limited to, at Licensor's option, powering down such interfering equipment and later powering up such interfering equipment for intermittent testing. If the interference continues for a period in excess of 48 hours following such notification, Licensor shall have the right to require Licensee to reduce power, and/or cease operations until such time Licensee can effect repairs to the interfering equipment. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

If after a period of 30 days, Licensee is unable to fully correct and eliminate the interference, Licensor shall be entitled to require Licensee terminate the Supplement or relocate the Equipment.

Licensee agrees that no diminution of light, air, or signal transmission by any structure (whether or not erected by the Licensor) will entitle Licensee to any reduction of the Annual Rent under any Supplement, result in any liability of the Licensor to Licensee, or in any other way affect this Agreement, any Supplement, or Licensee's obligations, except as specifically provided in this Agreement.

**14. Removal at End of Term.** Licensee shall, within ninety (90) days prior to the expiration of the Term, or any earlier termination of a Supplement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted. Licensor agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Licensee shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the Term. If, following the 90 day removal period, Licensee remains on the Premises, Licensee shall pay rent at the then-existing fair market monthly rate, or on a monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures and all personal property are completed.

**14 a. Abandonment.** Licensee's Small Wireless Facilities shall be deemed abandoned if (i) Licensee notifies the Licensor in writing that it no longer requires the Small Wireless Facilities or (ii) Licensor notifies the Licensee in writing that Licensee has failed to make License Fee payments or Licensor believes Licensee has not used the Small Wireless Facilities for a continuous period of six (6) months and Licensee does not pay or respond within sixty (60) days of notification from



Licensor. Calculation of any period of abandonment shall exclude any period during which Licensee's Small Wireless Facilities are not used because of acts of God, fire, floods, war, invasion, sabotage, accidents or because of any cause beyond the control of Licensee, including temporary dislocation in connection with a Licensor or City improvement or facility. In the event of abandonment, Licensee, at its sole cost and expense, shall promptly remove its Small Wireless Facilities from the Site, if so requested in writing by notice thereof by the Licensor, and shall restore the Site to a condition substantially the same as existing prior to the Commencement Date, excepting normal wear and tear, to the satisfaction and approval of the Licensor. Should Licensee, within sixty (60) days of receipt of such written notice, fail to remove its Small Wireless Facilities and restore the Site to a condition substantially the same as existed prior to the Commencement Date, excepting normal wear and tear, the Licensor may perform such removal and restoration and charge the actual and reasonable cost thereof to Licensee plus a twenty percent (20%) Administrative Fee. Licensee acknowledges and agrees that such Administrative Fee is not a penalty but a reasonable charge for the time required by Licensor's employees in connection with such removal and restoration. At the Licensor's option, upon abandonment by Licensee, title to Licensee's Small Wireless Facilities shall vest in the Licensor free and clear of Licensee's claims, liens and encumbrances.

**15. Rights Upon Sale.** If, at any time during the Term of any Supplement, Licensor decides: (i) to sell or transfer all or any part of the Property or the Poles thereon to a purchaser other than Licensee, or (ii) to grant to a third party by easement or other legal instrument an interest in that portion of the Property occupied by Licensee, or a larger portion thereof, for the purpose of operating and maintaining Small Wireless Facilities or the management thereof, that sale or grant of an easement or interest therein shall be subject to the Supplement, and any such purchaser or transferee must recognize Licensee's rights hereunder and under the terms of the affected Supplement(s). If Licensor completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the Supplement in which the third party agrees in writing to assume all obligations of Licensor under the Supplement, then Licensor shall not be released from its obligations to Licensee under the Supplement, and Licensee shall have the right to look to Licensor and the third party for the full performance of the Supplement.

**16. Quiet Enjoyment and Representations.** Licensor covenants that Licensee, on paying the rent and performing the covenants herein and in the Supplement, shall peaceably and quietly have, hold and enjoy the Premises. Licensor represents and warrants to Licensee as of the execution date of each Supplement, and covenants during the Term, that Licensor is seized of good and sufficient title and interest to the Property, and has full authority to enter into and execute the Supplement. Licensor further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting Licensor's title to the same and that there are no covenants, easements or restrictions that prevent or adversely affect the use or occupancy of the Premises by Licensee as provided in this Agreement and in the applicable Supplement(s).

**17. Assignment.** So long as Licensee is in full compliance with this Agreement and any Supplements, this Agreement and each Supplement under it may be sold, assigned or transferred by the Licensee without any approval or consent of the Licensor to the Licensee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the Property is located by reason of

a merger, acquisition or other business reorganization (“**Licensee Affiliate**”). As to other parties, this Agreement and each Supplement may not be sold, assigned or transferred without the written consent of the Licensor, which consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder. In the event of any sale, assignment or transfer, Licensee shall not be relieved of any of its obligations under this Agreement or any of the Supplements whose term has not expired or otherwise terminated at the time of such sale, assignment or transfer.

**18. Notices.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Licensor: Rochester Public Utilities  
Attn: Purchasing  
4000 East River Road NE  
Rochester MN 55906

Licensee: [enter]

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

**19. Recording.** Licensor, upon request, agrees to execute a Memorandum of each Supplement which Licensee may record with the appropriate recording officer. The date set forth in the Memorandum of License is for recording purposes only and bears no reference to commencement of either the Term or rental payments.

**20. Default.** If there is a breach by a Party with respect to any of the provisions of this Agreement, or under the provisions of an individual Supplement, the non-breaching Party shall give the breaching Party written notice of that breach. After receipt of the written notice, the breaching Party shall have thirty (30) days in which to cure the breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion, but in no event more than ninety (90) calendar days after receipt of written notice. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Licensor and Licensee agree that a default under an individual Supplement does not constitute a default under this Agreement.

**21. Remedies.** In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of that default, the non-defaulting Party may terminate the Agreement and/or applicable Supplement and/or pursue any remedy now or hereafter

available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. Disputed amounts are not subject to off-set.

## 22. Environmental.

**a. RF Study.** Upon Request of Licensor, Licensee must obtain a radio frequency interference study carried out by an independent, licensed professional radio frequency engineer ("RF Engineer") showing that Licensee's intended use will not interfere with any existing, licensed Small Wireless Facilities, as well as Licensor's licensed and unlicensed Small Wireless Facilities, which are located on or near the Premises. The RF Engineer shall provide said evaluation no later than 30 days after frequencies are provided by Licensor. Licensee shall not transmit or receive radio waves at the Property until such evaluation has been satisfactorily completed.

**b. Radiation Survey.** Licensee shall hire an RF Engineer to conduct a radiation survey of the Property following Licensee's initial RF transmissions on the Premises and provide the results to Licensee within 60 days. Licensee shall be responsible for all costs of such survey.

**c. FCC Testing.** Licensee shall implement all measures at the transmission site required by FCC regulations, including but not limited to posting signs and markings. Licensor shall cooperate with and permit Licensee to implement all reasonable measures in order for Licensee to fulfill its radio frequency exposure obligations. Licensor agrees that in the event any future party causes the entire site to exceed FCC radio frequency radiation limits, as measured on the Premises, Licensor shall hold such future party liable for all such later-arising non-compliance.

**23. Casualty.** In the event of damage by fire or other casualty to the Utility Pole or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days, then Licensee may, at any time following such fire or other casualty, provided Licensor has not completed the restoration required to permit Licensee to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days prior written notice to Licensor. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Supplement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Licensee's use of the Premises is impaired.

**24. Applicable Laws.** During the Term, Licensor shall maintain the Property and the Poles in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes,

and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, laws regulating hazardous substances) (collectively “Laws”). Licensee shall, in respect to the condition of the Premises and at Licensee’s sole cost and expense, comply with: (a) all Laws relating solely to Licensee’s specific and unique nature of use of the Premises; and (b) all codes or rules requiring modifications to the Premises due to the improvements being made by Licensee in the Premises. It shall be Licensee’s obligation to comply with all Laws relating to the Property and Poles in general, without regard to specific use (including, without limitation, modifications required to enable Licensee to obtain all necessary building permits). This Agreement does not address any rights Licensee may have in accordance with Laws including Minnesota Statutes Sections 237.162-163 to install its own poles in the City’s right of way (“ROW”) or to attach Licensee’s equipment to third party poles located in the ROW. Except as provided herein, this Agreement shall in no way limit or waive either Party’s rights under Laws.

**25. Change of Laws.** In the event that any legislative, regulatory, judicial, or other action, with binding jurisdiction in the State of Minnesota, materially affects the rights or obligations of either Party, then either Party may, upon thirty (30) days’ written Notice, require that the terms of this Agreement be renegotiated. In the event that the Parties are unable to agree in good faith upon renegotiated terms within one hundred eighty (180) days after Notice, then the Agreement shall terminate unless extended by mutual agreement.

**26. Governmental Data.** The Parties acknowledge and agree that this Agreement is considered public data not on individuals and is accessible to the public under Minnesota Statutes, Section 13.03. Licensee and Licensor agrees to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statutes, Chapter 13, and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality.

**27. Authorized Entities.** This Agreement is entered into by the Parties each on its own behalf and for the benefit of: (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Each Party and each of the entities described above are referred to herein as an “Authorized Entity”. No obligation is incurred or liability accepted by any Authorized Entity until that Authorized Entity enters into a site specific Supplement. Only the Party and the Authorized Entity executing a Supplement are responsible for the obligations and liabilities related thereto arising under that Supplement and this Agreement. All communications and invoices relating to a Supplement must be directed to the Authorized Entity signing the Supplement. A default by any Authorized Entity will not constitute or serve as a basis for a default by any other Authorized Entity not a party to the applicable Supplement.

**28. Use of Public Rights-of-Way.**

a. Licensee agrees to obey and comply with all applicable governmental ordinances, laws, rules, regulations, or restrictions, including, but not limited to, City of Rochester Code Chapters 25 (Public Right-of-Way Management), 70 (Concrete Sidewalks, Driveways, Curbs and Gutters), 71 (Curbs, Curb Cuts, and Driveways), 72 (Maintenance and Repair of Sidewalks), and 73

(Miscellaneous Street and Sidewalk Regulations) and the City of Rochester Zoning Ordinance and Land Development Manual. Subject to any Licensor ordinance, Licensor permitting requirements, and **Exhibit A**.

b. Small Wireless Facility shall be installed in accordance with applicable Laws, and Licensee shall comply with all laws, ordinances, rules and regulations adopted by Licensor. Within the public rights-of-way, the location of the Small Wireless Facility shall be subject to the reasonable and proper regulation, direction and control of the Licensor, or the official to whom such duties have been delegated by Licensor. Licensee shall have no ownership interest in any Poles owned by Licensor.

c. Licensee and its contractors shall comply with all construction permits and reasonable notice requirements (including the dates, location, and nature) for all work to be performed on its Small Wireless Facility within the public rights-of-way. Licensee shall perform all work on Licensee's Small Wireless Facility within the public rights-of-way when necessary for the installation, replacement, abandonment, operation or maintenance of Licensee's communications equipment in accordance with applicable law, including, but not limited to, Chapters 25 (Public Right-of-Way Management), 70 (Concrete Sidewalks, Driveways, Curbs and Gutters), 71 (Curbs, Curb Cuts, and Driveways), 72 (Maintenance and Repair of Sidewalks), and 73 (Miscellaneous Street and Sidewalk Regulations) of the Rochester Municipal Code. Following completion of work in the public rights-of-way, Licensee shall repair any affected public rights-of-way as soon as possible, but no later than the time frame established by any permit issued by the Licensor. No street, alley, highway, or public place shall be encumbered for a longer period than shall be necessary to execute the work authorized by the applicable Supplement and this Agreement.

**29. Miscellaneous.** This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises and understandings between the Licensor and the Licensee regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the Licensor or the Licensee in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. No acceptance by Licensor or any of its agents of full or partial payment of any fees during the continuance of any breach of this Agreement will constitute a waiver of such breach or of the Licensor's right to demand strict compliance with such term, covenant, or condition, or operate as a waiver of any requirement of this Agreement. The performance of this Agreement via each Supplement shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules.

**a. Voluntary Agreement.** By executing this Agreement, the parties acknowledge that they: (a) enter into and execute this Agreement knowingly, voluntarily and freely of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had an opportunity to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms and appreciate the significance of those terms; and (d) have not relied

upon any representation or statement not set forth herein.

**b. No Liens.** Licensee shall keep the Premises free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment, or material to Licensee in any way connected with Licensee's use of the Premises that the Premises are public property and is not subject to mechanics' liens or stop notices for equipment, other materials, or services provided to Licensee. If Licensee does not cause the release of lien of a mechanic's lien or stop notice by any contractor, service provider, or equipment or material supplier purporting to attach to the Premises within 30 days after notice or discovery of the lien, the Licensor will have the right, but not the obligation, to cause same to be released by any means it deems proper, including payment of the claim giving rise to such lien. Licensee must reimburse the Licensor for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) with ten days following receipt of the Licensor's demand together with proof of Licensor's expenses.

**c. Relocation Assistance.** This Agreement creates no right to Licensee to receive any relocation assistance under state or federal law.

**d. No Joint Venture.** Neither this Agreement nor any Supplement creates a partnership or joint venture between the parties.

**e. Exhibits.** Exhibits A through D listed below are hereby incorporated into this Agreement by reference.

- Exhibit A – License Supplement
- Exhibit B – License Supplement Application
- Exhibit C – Small Wireless Facility Construction Criteria
- Exhibit D – Fee Schedule



IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above written.

[enter]

**CITY OF ROCHESTER**

By

By

\_\_\_\_\_  
[ENTER]

\_\_\_\_\_  
Ardell Brede, Mayor

Attest

\_\_\_\_\_  
Anissa Hollingshead, City Clerk

Approved as to Form

\_\_\_\_\_  
Jason Loos, City Attorney

**ROCHESTER PUBLIC UTILITIES**

\_\_\_\_\_  
Mark Kotschevar, General Manager

Attachment: Board Master Small Cell Collocation Agreement Final (9801 : Master Small Cell Wireless Collocation Agreement)



**EXHIBIT A**  
**License Supplement**  
**License Supplement No.**

This License Supplement is entered on this \_\_\_\_\_, between the City of Rochester, acting by and through its Public Utility Board Minnesota, a Minnesota municipal corporation, with its principal offices located at 4000 East River Road NE, Rochester MN 55906, hereinafter designated “Licensor” or “RPU” and XXXXX with its principal offices at XXXXXXXXXXXXXXX, hereinafter designated “Licensee”. Licensor and Licensee are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

1. **Overview of License Supplement.** This License Supplement applies to the Small Wireless Facility located at <insert site address>.
2. **Term.** The Commencement Date shall be <enter date> and shall continue for a term of <enter> (not to exceed the 10-year term of the Master Agreement).
3. **Consideration.** Rent under this Supplement shall be <enter> per year, payable to RPU, 4000 East River Road NE, Rochester MN 55906. The annual rental for this Supplement shall be increased by 3% on January 1<sup>st</sup> of each subsequent year. The pro-rated amount shall be <enter> (xxxx to 12.31.1x) and shall be paid within 30 days of execution of this Supplement.
4. **Electrical Charges.** Annual electrical usage in the amount of <enter> and shall be due with the rent payment. The pro-rated amount shall be <enter> (xxxx to 12.31.1x) and shall be paid within 30 days of execution of this Supplement.
5. **Source of Authority.** This License Supplement is authorized and executed pursuant to the terms and conditions of the “Master Small Cell Wireless Collocation Agreement, RPU #: \_\_\_\_\_,” as it may be amended by the Parties during its Term (“Agreement”). All of the terms and conditions of the Agreement, including any future amendments, are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. Capitalized terms used in this License Supplement shall have the same definitions and meanings ascribe to them in the Master Small Cell Wireless Collocation Agreement, unless otherwise indicated herein.
6. **Scope of License.** This License Supplement is limited to the Small Wireless Facility installation referenced in the approved License Supplement Application, including all attachments, attached as **Exhibit B**.
7. **Conflict in Interpretation.** Nothing in this License Supplement is intended to grant Licensee any rights or privileges beyond those addressed in the Agreement. In the event of any conflict in contractual interpretation between this License Supplement and the Master Small Cell Wireless Collocation Agreement, the terms and conditions of the Master Small Cell Wireless Collocation Agreement shall govern. Any future amendments or modifications to the Master Small Cell Wireless Collocation Agreement shall simultaneously apply and serve to amend or modify this License Supplement without the need by either Party to provide notice of such to the other.
8. **Site Specific Conditions.** (Include any site-specific terms).
9. **Site Modifications.** Licensee shall comply with the requirements for site modifications as

outlined in the Master Small Cell Wireless Collocation Agreement. Approved modifications shall be attached as **Exhibit B** and made a part hereto.

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

{ENTER}

**CITY OF ROCHESTER**

By

By

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

\_\_\_\_\_  
Ardell Brede, Mayor

Attest

\_\_\_\_\_  
Anissa Hollingshead, City Clerk

Approved as to Form

\_\_\_\_\_  
Jason Loos, City Attorney

**ROCHESTER PUBLIC UTILITIES**

\_\_\_\_\_  
Mark Kotschevar, General Manager

Attachment: Board Master Small Cell Collocation Agreement Final (9801 : Master Small Cell Wireless Collocation Agreement)

## EXHIBIT B LICENSE SUPPLEMENT APPLICATION

**1. Licensee Information**

**Legal Name of Applicant:**

Contact:

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**Entity Name of Technical Advisor:**

Contact Person: \_\_\_\_\_ Direct Phone: \_\_\_\_\_

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

**2. Site Technical Information**

Address of proposed site:

Applicant site ID (if applicable)

Proposed effective date of installation:

Pole Site GIS Coordinates:

FCC License/Permit No.:

**General Description of work:**

**Type of Installation (Choose One):**

- Small Wireless Facility with Wireless Backhaul Solution
- Small Wireless Facility with Landline Backhaul Solution
- Small Wireless Facility with Landline Backhaul Solution & Temporary Wireless Backhaul
- Wireless Backhaul Transmission Equipment Only

Attachment Height (ft.):	Weight of Equipment:
Number of Antennas:	Antenna Dimensions:
Pole Alteration:	<input type="checkbox"/> Pole Replacement <input type="checkbox"/> New Pole
Pole Type:	<input type="checkbox"/> City Light Pole <input type="checkbox"/> City Utility Pole <input type="checkbox"/> Other
Backhaul Solution:	<input type="checkbox"/> Leased Landline Transport Service Name of Provider: <input type="checkbox"/> Wireless Transmission Equipment Type of Equipment:
Location of Equipment Shelter:	<input type="checkbox"/> Installed on Pole <input type="checkbox"/> Installed in Ground (Vault) <input type="checkbox"/> Other Location

**APPLICANT SHALL PROVIDE THE FOLLOWING IF APPLICABLE:**

- Site plan and engineering design and specifications for installation, including the line or CAD drawings showing the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling; diagrams, shop drawings, and pictures of the applicable proposed facility; and a complete and detailed inventory of Licensee’s antenna, cable, and other equipment and personal property to be installed on the Premises. The design documents should include photo(s) of the existing pole, and photo simulation of pole with attached equipment.
- A structural engineering study signed by a Professional Engineer licensed in Minnesota.
- For new pole installations, include documentation from the City’s Department of Public Works verifying that the pole location in the ROW is eligible for installation.
- Copy of the manufacturer’s detailed specifications for Small Wireless Facilities, including photographs

- or illustrations and a complete description of all pertinent physical and electrical characteristics.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- Description of interference restrictions associated with other wireless providers.
- All permits and letters of authorization from all affected parties.
- Valid FCC license or other appropriate certificates or permits as required.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

**ATTACH CHECK IN AMOUNT OF \$1,550. THIS SUPPLEMENT LICENSE FEE IS NON-REFUNDABLE AND NON-TRANSFERABLE.**

<b>Direct Application Questions:</b>	<b>Mail Application With Checks:</b>
Brian Kelly bkelly@rpu.org 507.280.1518	Rochester Public Utilities Attn: Mona Hoeft 4000 East River Road NE Rochester, MN 55906

Application must be signed by the entity which will be licensed by the City of Rochester. A site acquisition company **IS NOT** acceptable.

Signer understands and agrees to the provisions contained herein, and that they are authorized to sign this Application. It is also agreed that Licensor may release any and all information relating to this application or its approval to any company, consultant, agent, or vendor that represents, or does business on behalf of the applicant.

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

Print name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Email: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Company: \_\_\_\_\_ Date: \_\_\_\_\_

<b>----- FOR CITY USE ONLY -----</b>	
RECEIPT DATE:	APPLICATION NO.:
APPROVED BY:	
PRINT NAME:	
TITLE:	
APPROVAL DATE:	
RPU IDENTIFICATION #:	
MLA #:	

Attachment: Board Master Small Cell Collocation Agreement Final (9801 : Master Small Cell Wireless Collocation Agreement)

**EXHIBIT C**  
**Small Wireless Facility Construction Criteria**  
**Streetlight Poles**

The installation or attachment of an antenna or other wireless communications equipment utilizing small cell technology (the “wireless equipment”) to stand-alone streetlight poles in the City of Rochester shall be subject to the criteria set forth below. In all cases, the existing pole shall be replaced with a new combination streetlight pole that can accommodate the equipment proposed to be attached and the street light luminaire (the “replacement pole”).

**A. Pole Criteria:**

1. Specific criteria:

- a. Only one installation per pole on a first come, first served basis is permitted.
- b. The wireless equipment is not permitted to protrude more than five (5) feet above the streetlight luminaire itself.
- c. The mounting height of the luminaire on the streetlight pole shall be no more than 35 feet.
- d. The mast arm length of a replacement pole shall match the existing streetlight pole being replaced.
- e. The color and surface treatment of the replacement pole shall match the surrounding area poles. Color criteria for poles shall be as follows:
  1. Downtown Core Area, 30’ height – black finish
  2. Non-Downtown Core Area, 30’ height – galvanized or gray finish
  3. Non-Downtown Core Area, 20’ height – stainless steel finish (no paint)
  4. Shoppes on Maine Area, 14’ and 25’ height – dark green
- f. No Company signs are permitted to be placed on a streetlight pole, including a replacement pole, except to the extent required by local, state or federal law or regulations.
- g. All pole attached wireless equipment must be a minimum 10 feet from the sidewalk elevation.
- h. All ground based wireless equipment, including, but not limited to, equipment cabinets or power pedestals, shall be placed at the back of the right-of-way whenever possible.
- i. All pole-mounted equipment shall match the color of the replacement pole.
- j. For each individual pole type or style used to support the wireless equipment, one

spare replacement pole shall be provided by Licensee to the City at the end of the project so that the pole can be replaced promptly in case of a knockdown.

- k. All plans shall be signed and sealed by a Professional Civil and Electrical Engineer.
- l. All other details in the City of Rochester Street Light Design Standards shall apply.
- m. The replacement pole and the wireless equipment attached to the pole shall not increase the diameter of the existing pole that is replaced by more than sixty (60) percent, not to exceed eight (8) inches total, or increase the height of the existing pole by more than ten (10) percent, not to exceed four (4) feet.
- n. Antennas shall be limited to snug-mount, canister-mount, and concealed antennas and mounted no more than 6 inches off the pole.
- o. All cables or wires for the attached wireless equipment shall be located inside the pole except where such cables or wires attach to the ports in the antenna.
- p. When wireless equipment is attached to a replacement pole, the primary purpose of the pole shall remain as a pole structure supporting a streetlight luminaire and related streetlight fixtures used to provide lighting to the City right-of-way.

**B. Equipment cabinets:**

- 1. Equipment cabinet locations shall comply with the height and development standards of the underlying zoning district;
- 2. Equipment cabinets with air-conditioning shall be enclosed by walls and setback a minimum of fifteen (15) feet from lots where the existing or planned primary use is a single-family dwelling.
- 3. The associated equipment will be reviewed by City for each location, and will be screened wherever the same can be screened in a commercially reasonable manner.
- 4. No more than one equipment cabinet and/or power pedestal shall be located at and serve any one pole site.

**C. Above-Ground Utility Structures:**

- 1. All permit applications to place or install above ground structure greater than 24" must be accompanied by the following information:
  - a. Evidence or documentation that, where the above-ground structure is over 36" in height, given its proposed location, the structure will comply or be in compliance with applicable City of Rochester Zoning Ordinance and Land Development Manual.



- b. City will provide documentation that identifies a potential site for replacement within neighborhood. (The site will be selected on the basis of aesthetics and technical/engineering restrictions.)
- c. Evidence that the structure shall be placed on the same side of the right-of-way as refuse containers or utility poles. (The Licensee shall not block trash truck access and alley access.)
- d. Verification of sight-triangle compliance.
- e. Three (3) photographs of the proposed structure, one (1) at 90 degrees, the other two at 45 degrees on either side of the proposed location. (Identify the location of the proposed structure, mark the location with white tape, use an orange traffic cone, etc.)
- f. Evidence or documentation of the dimension of the structure.
- g. Evidence or documentation that the structure shall not exceed 36" in height in front of the front yard of a residential home.
- h. Information as to the specifications of the structure, if available.



## Exhibit D

Rochester Public Utilities  
Small Wireless Collocation Fee Schedule  
(Exempt from MS 237.163)  
Effective January 1, 2018

Master Agreement Fee – one-time fee	\$5,000
Supplement License Fee – one-time fee per premise	\$1,550
Rent – annual, per premise	\$ 900



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the agreement with:

Master Small Cell Wireless Collocation and License Supplement

And approve a resolution authorizing the Mayor and City Clerk to execute the agreements, and authorize the General Manager, after consulting with the City Attorney, to approve future amendments or subsequent agreements in non-material changes consistent with the master agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of November, 2018.

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President

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Secretary

## FOR BOARD ACTION

Agenda Item # (ID # 9822)

Meeting Date: 11/27/2018

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**SUBJECT: RPU Index of Board Policies**

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**PREPARED BY: Christina Bailey**

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ITEM DESCRIPTION:

UTILITY BOARD ACTION REQUESTED:

ROCHESTER PUBLIC UTILITIES		
INDEX OF BOARD POLICIES		
	REVISION DATE	RESPONSIBLE BOARD COMMITTEE
<b>BOARD</b>		
1. Mission Statement	6/26/2012	Policy
2. Responsibilities and Functions	3/27/2012	Policy
3. Relationship with the Common Council	2/28/2012	Policy
4. Board Organization	3/27/2018	Policy
5. Board Procedures	3/27/2012	Policy
6. Delegation of Authority/Relationship with Management	7/24/2018	Policy
7. Member Attendance at Conferences and Meetings	6/10/1986	Policy
8. Board Member Expenses	6/10/1986	Combine with #7
9. Conflict of Interest	11/26/1985	Delete
10. Alcohol and Illegal Drugs	7/28/1988	Delete
11. Worker Safety	3/27/2012	Policy
<b>CUSTOMER</b>		
12. Customer Relations	5/8/1984	Ops & Admin
13. Customer and Public Information	4/10/1984	Communications
14. Application for Service	7/1/2016	Ops & Admin
15. Electric Utility Line Extension Policy	3/28/2017	Finance
16. Billing, Credit and Collections Policy	7/25/2017	Finance
17. Electric Service Availability	4/28/1998	Ops & Admin
18. Water and Electric Metering	6/26/2018	Ops & Admin
19. Electric & Water Bill Adjustment	3/10/1994	Finance
20. Rates	7/25/2017	Finance
21. Involuntary Disconnection	4/24/2018	Communications
<b>ADMINISTRATIVE</b>		
22. Acquisition and Disposal of Interest in Real Property	12/19/2017	Ops & Admin
23. Electric Utility Cash Reserve Policy	1/13/2017	Finance
24. Water Utility Cash Reserve Policy	1/13/2017	Finance
25. Charitable Contributions	11/26/1985	Communications
26. Utility Compliance	10/24/2017	Communications
27. Contribution in Lieu of Taxes	6/29/1999	Finance
28. Debt Issuance (PENDING)	PENDING	Finance
29. Joint-Use of Fixed Facilities and Land Rights	10/8/1996	Ops & Admin
30. Customer Data Policy	10/9/2014	Communications
31. Life Support	10/9/2014	Communications
32. Undergrounding Policy	PENDING	Ops & Admin
Red - Currently being worked on		
Yellow - Will be scheduled for revision		