

NOTICE

Municipal Services Committee
Regular Meeting
Tuesday, July 26th 2022 at 5:00 pm

Meeting will be held in person at the City Hall, 31 S Madison St Evansville, WI.

AGENDA

1. Call meeting to order
2. Roll call
3. Civility Reminder
4. Motion to approve the agenda as presented.
5. Motion to waive the reading and approve the minutes as printed from the June 28th, 2022 regular Municipal Services Committee meeting.
6. Citizen appearances other than agenda items.
 -
7. Billing / Customer Service:
 - a. Quarterly review and discussion of staff approved sanitary sewer billing adjustments, (Jan, Apr, Jul, Oct).
 - b. Review of and motion to approve the current utility account write offs in the amount of \$899.42
8. Director's Report:
 - a. Parks and Recreation Report
 - b. Lake Leota Dam Project Update
 - c. Review of and motion to recommend to Common Council the approval of a Pole Attachment Agreement with TDS Metrocom Inc.
 - d. Overhead to underground electric project update
 - e. AMI Project (Placeholder)
 - Current AMI count remaining- Elec: 0 Water: 217
9. City Engineer Report:
 - a. Sub-division / Development Update
 - b. Lead service lateral replacements – motion to recommend policy to Common Council for approval.
 - c. Roadway construction & other project updates.
 - First & Second St Projects
 - Liberty St Project

- Sidewalk Projects

10. Administrative Staff's Report:

- a. West Side Park Progress Report (Placeholder)

11. WPPI:

- a. Introduction & welcome to the new ESM (Electric Service Manager) Darren Jacobson.
- b. Customer Appreciation Event

12. Old Business:

- a.

13. New Business:

- a. Washington DC Update from Jim Brooks

14. Upcoming Meeting Date:

August 30th, 2022 at 5:00 pm

15. Adjourn:

James Brooks, Committee Chair

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

NOTICE

Municipal Services Committee
Regular Meeting
Tuesday, June 28th 2022 at 5:00 pm

Meeting will be held in person at the City Hall, 31 S Madison St Evansville, WI.

MINUTES

1. **Call meeting to order: 5:07 PM**
2. **Roll call:** Committee Chair Jim Brooks, Alder. Joy Morrison, and Alder. Ben Laddick.
Also in Attendance: Donna Hammett, Chad Renly, Kerry Lindroth, Bill Lathrop, and Jason Sergeant.
3. **Civility Reminder**
4. **Motion to approve the agenda as presented.** Ladick/Morrison 3-0
5. **Motion to waive the reading and approve the minutes as printed from the May 31st, 2022 regular Municipal Services Committee meeting.** Ladick/Morrison 3-0 (with corrections. 8d and e)
6. **Citizen appearances other than agenda items.**
 - None
7. **Billing / Customer Service:**

Hammett reviewed arrearages and updated on disconnections:
June 27th 60 Door knockers were hung
June 28th 4 services were disconnected. By the end of the day only 2 were still off.
There are still 2 off from April.
30 days past due amount: \$103,909.45
60 + days past due amount: \$40,978.48

 - a. **Quarterly review and discussion of staff approved sanitary sewer billing adjustments,**
(Jan, Apr, Jul, Oct).
8. **Director's Report:**
 - a. **Parks and Recreation Report**

Getting ready for the 4th of July, a lot of mowing.

Renly stated that there have been some whiting events on the lake, this is calcium-carbonate from the sediment and it is not harmful and is a natural event, if there are calls from the public.

- **Warming House / Band Stand Stairs Update**

- b. TDS fiber cabinet easement locations discussion and possible motion to recommend approval to Common Council.** Renly provide pictures of possible sites for cabinet easement locations. MSC is ok with the sites, knowing this is just the start of the process. There is was no motion to recommend approval to Common Council at this time.
- c. Substation transformer update:** Renly updated everyone on the repairs to the transformer, he received the engineering inspection report, along with a \$68,000 change order for additional repairs. Renly sat down with Forrester to discuss possible solutions, because the utility cannot afford another \$68, 000. Renly talked about Black Earth utility and their need of a transformer. Black Earth is willing to pay for what the city has put into the transformer, plus the scrap value, then they would open an escrow account at a bank between Black Earth and Evansville, where they would put funds in for the remaining transformer repair cost. The question was asked when we need to replace the transformer at the substation. The plan is to go through the rate case using 2023 as our case year. As we start getting the funds for the UTL Substation project, we can also add a new transformer in the cost of this project. This project is a 3-year project, which includes the new southern rural loop. The plan to replace the transformer is to get it ordered next year which is estimated to be approximately \$550,000. We are hoping to have all the data together for filing the rate case the end of August.
- d. AMI Project (Placeholder)**
 - **Current AMI count remaining- Elec: 0 Water: 217**
Communication Modules are here.
Hammett will be sending out letters to customer to change out water meters on July 11, 2022. Hoping to start getting appointments and meters changed out.
Renly wanted to discuss the CMAR that was discussed at the December 2021 meeting and presented to Common Council for approval. Renly realized that he put in the 2020 CMAR report in the MSC pocket but the 2021 CMAR report is what was discussed and approved at Council. MSC didn't feel there needed to be any action.

9. City Engineer Report:

- a. Sub-division / Development Update-** Porter Rd, the curb is poured, they will be waiting on pavement, sent Hartin out with a punch list to mark out for repairs.
- b. Inflow and Infiltration Study (Placeholder)-No Rain**
- c. Roadway construction & other project updates.**
 - **First & Second St Projects-** Holding off on second lift until they are ready to do the first lift on First St. Renly believes most of the punch list items have been completed.
 - **Liberty St Project-** Renly stated that the construction is going pretty smoothly. A random sewer connection that was right off of Madison St was found, there is the main sewer line and another sewer line adjacent that several houses on it. One house was taken off and the rest will stay on it. Renly believes it was most likely originally installed due to a lack of an acceptable pitch.

Roberts found a collapsed storm sewer at Maple St, Renly talked to Berquist about having it added to the project.

- **Sidewalk Projects-** Completed

10. Administrative Staff's Report:

- a. **West Side Park Progress Report (Placeholder)** - Council Approved it. Working on a borrowing plan. CCI was awarded the contract.

11. WPPI:

- a. Darren our new ERM has started Job shadowing for the next 2 weeks, and will come to the July MSC. Possibly trying to get Darren here before, to discuss all the residential solar installs going on and any other items we feel he should know about. There are about 41 active solar customers at this time.

12. Old Business:

- a. Uptown Flowers are doing well.

13. New Business:

- a. Ladick asked about a Tree Replacement Grant (on Liberty St) ATC possible has a grant program. Right now it is hard to get trees due to a shortage.

14. Upcoming Meeting Date:

July 26th, 2022 at 5:00 pm

15. Adjourn: Ladick/Morrison 3-0 6:04 pm

James Brooks, Committee Chair

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Date	Account Number	Total Overage Amount	Percentage Used	Credit Amount	Reason for Credit	
4/19/2022	19-1440-08	500	75%	\$ (27.00)	Running Toilet	500
4/28/2022	14-2800-08	1100	100%	\$ (79.20)	Running outside spigot	400
4/27/2022	29-3610-02	1951	75%	\$ (105.35)	Running Toilet	454
5/10/2022	11-1460-01	419	100%	\$ (30.17)	running outside spigot	1133
5/17/2022	16-7170-00	317	75%	\$ (17.12)	Bad Water Softener	480
5/19/2022	18-4330-06	233	100%	\$ (16.78)	Running out side hose/unknown how	386
5/19/2022	29-5260-01	637	100%	\$ (45.86)	Running outside hose/unkown how	450
5/19/2022	11-2180-08	1788	100%	\$ (128.74)	Running outside hose	581
5/9/2022	29-7820-02	443	100%	\$ (31.90)	Running ouside hose-3 year old turned it on.	862
5/29/2022	18-4460-03	994	100%	\$ (71.57)	Outside spiget left on.	686
6/14/2022	20-2360-07	409	75%	\$ (22.09)	Broken Toilet and fauset	610
6/29/2022	11-1320-01	1014	100%	\$ (73.01)	Leaking hose	180
6/29/2022	18-2340-00	1170	100%	\$ (84.24)	Left hose on overnight	466
7/6/2022	17-1925-02	2769	100%	\$ (199.37)	Left outside house on	153

Write Offs

Account #	Amount	Reason for W/O
15-3600-08	\$ 467.04	SDC has recalled account-Uncollectable
22-3905-09	\$ 148.16	SDC has recalled account-Uncollectable
22-4300-07	\$ 284.22	SDC has recalled account-Uncollectable

Total \$ 899.42

POLE ATTACHMENT AGREEMENT

This POLE ATTACHMENT AGREEMENT dated as of May 1st, 2022, for the use of facilities is between the City of Evansville (hereinafter called “City”), and (TDS Metrocom, LLC) (hereinafter called “Licensee”).

WITNESSETH

WHEREAS, City owns, operates, maintains, and controls certain electric power distribution poles (hereinafter “poles”) within the City of Evansville, Wisconsin; and

WHEREAS, Licensee proposed to place and maintain aerial cables, wires, related equipment reasonably necessary for the use of wire or aerial cables and related equipment reasonably necessary to attach wire or aerial cables to City poles at specific locations in City’s service area and desired to attach such facilities to poles or structures owned and maintained by the City; and

WHEREAS, City is willing to permit, to the extent it may lawfully do so, the attachment of Licensee’s facilities to its poles on a non-exclusive, but non-discriminatory basis, where safety will not be adversely affected and such use will not interfere with City’s own service requirements and with the rights and privileges of other parties currently using City’s poles.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants, terms and conditions hereinafter contained, the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE I

Scope of Agreement

1.1 General Scope.

This Agreement shall be in effect and shall apply to all Attachments made by Licensee to poles owned by City now existing or hereinafter erected and such poles are included within the scope of this Agreement in accordance with the procedures set forth below. City reserves the right to exclude use of its poles from joint use, on a nondiscriminatory basis, where, in the judgment of the City joint use would be unsafe or violate a rule or, regulation, or generally applicable engineering practices.

1.2 Rights of Parties.

The rights and privileges of Licensee shall be subject to the rights and privileges of others upon whom City has conferred contractual rights or privileges to use its poles prior to the execution of this Agreement, or predecessors to this Agreement. Notwithstanding the foregoing, to the extent Licensee has preexisting Attachments, rights of other parties shall be subject to Licensee’s preexisting Attachments and rights thereto.

1.3 Authorization.

Subject to the provisions of this Agreement, City agrees to grant to Licensee a license for the nonexclusive right to attach its facilities to certain designated City poles. No use of City poles, however extended, or payment of fees or charges required under this Agreement, shall create or vest in Licensee any ownership of property rights in such poles. Licensee's rights herein shall be and remain a mere license for the duration of this Agreement.

1.4 Assignment.

Licensee may not assign its rights under this Agreement to any other person or entity without City's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee may, without pole owner consent, assign its rights under this Agreement to any entity it controls, is under common control with, or is controlled by. The licensee shall provide notice to the City of any such assignment.

1.5 Authorizations Required.

Licensee shall secure all legally required authorizations permits and any other approvals required by any governmental authority or private entity for the construction, operation, and maintenance of its facilities.

ARTICLE II

Definitions

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

2.1.1 Pole means an electrical power distribution pole owned and maintained by City.

2.1.2 Attachment means any and each wire, cable or other equipment or apparatus, including a service drop contact, attached directly to a City pole.

ARTICLE III

Reservation of Primary Use

3.1 Primary City Use.

City specifically reserves its right to maintain its own facilities and to operate its own equipment thereon in such a manner as will best enable it to fulfill its own service requirements. City shall not be liable to Licensee for any interruption of Licensee's service or for any interference with the operation of Licensee's facilities in any manner except by negligence or intentional misconduct of City. Notwithstanding the foregoing, City shall correct and remedy actions it takes that creates an interruption or interference with the operation of Licensee's services.

ARTICLE IV

Application for Attachment

4.1 Permit Application.

Except as set forth herein, Licensee shall not attach any of its Attachments to City's poles without first making written or electronic application to City for a permit and receiving written or electronic permission from City in the form of a permit. For the purposes of this Agreement, Licensee's facilities shall include wire or fiber cables to operate its lawful communications system, any related equipment reasonably necessary for the operation of that system, including equipment reasonably necessary to attach wire or fiber cables on City poles. Under this agreement, Licensee's Attachments shall not include Wi-Fi equipment, or any other device used for the provision of wireless internet, wireless phone service, or an antenna of any kind.

4.2 Application Procedure.

Whenever Licensee desires to attach its Attachments to any City pole, Licensee shall make application for a permit using a Permit Application Form specified by City. The fee for the application is \$15 per pole. City shall have the right to deny or request modification of the application if there is insufficient capacity, or for reasons of safety, reliability or generally applicable engineering reasons that cannot be remedied through make-ready work under this Agreement. City will approve or deny an application within Thirty (30) days of Licensee's submission of a complete Permit Application Form. Licensee may attach a Service Drop to a Pole prior to submitting an Application for the Service Drop, provided the attachment of the Service Drop is made in accordance with the Specifications, and that Licensee submits an Application for the Service Drop within 7 days after its attachment.

4.2.1 The application shall include sufficient drawings, specifications and information necessary so that the City, or its designee, can designate necessary make-ready, in conformity with code, regulation and generally applicable engineering practices.

4.2.2 If the application is approved, Licensee shall have the right to affix such Attachments in accordance with the application, as approved, in compliance with the specifications, terms, and conditions of this Agreement, in compliance with all applicable ordinances, statutes, codes, rules, regulations, and in conformity with generally applicable engineering practices.

4.2.3 City, upon receipt of an application, may contact the applicant to schedule an evaluation "ride out" with personnel from Licensee and City. For all ride outs, appropriately qualified personnel representing Licensee and City representative shall meet at the location of the proposed Attachment to determine if the Attachment or modification can be made, and to review technical requirements.

4.3 Installation; Certification.

Each application shall involve sufficient information so that City can ensure compliance with ordinances, statutes, codes, rules, regulations and good practice during construction and upon completion.

4.3.1 Licensee shall only use trained, qualified persons to work on all pole installations. Qualified persons shall be knowledgeable in applicable ordinance, statute, code, rules, regulations and standard industry practices and must be able to demonstrate competence in recognizing and preventing any ordinance, statute, code, rules, regulation and standard industry practice violations and to keep working clearances from energized lines and equipment.

4.3.2 Upon completion of the installation, Licensee shall give written confirmation to City that the installation is complete and complies with ordinance, codes, rules, regulations and good practices so that City may post-inspect. If the installation is found to be in violation of any applicable standards noted above, or if there are deviations from the original design specifications, City will make Licensee aware that corrections must be made within thirty (30) days of receipt of notification, or such other time mutually agreed to by the parties. If Licensee does not make corrections in such time, City will make the corrections at Licensee's expense. If corrections are unable to be made, the Attachment shall be removed.

4.4 Make Ready Work; Charges.

Whenever any City facility must be modified to accommodate any proposed Attachment, City will provide Licensee with a detailed estimate of "make ready" work it determines is necessary to prepare the pole for Licensee's facilities. After receiving this estimate, if Licensee still desires to make such Attachments, Licensee shall notify City within fifteen (15) days of receiving such estimate of confirmation of its desire to attach, and shall pay to City within 30 days of receipt of invoicing (after Licensee approval) any required payment for the estimated make-ready, including engineering, materials (including poles and associated hardware solely attributable to Licensee's Attachment), cost of removal (less any salvage value), and the expense of transferring City's facilities from the old to the new poles. City shall commence all requested make ready and pole replacement work within thirty (30) days of receiving any work request confirmation.

4.5 Non-Interference with City Facilities.

Licensee shall at all times ensure that its agents, servants, employees or contractors or contractor's employees do not interfere with City's wires, attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall

exercise reasonable precautions to avoid damage to the facilities of the other. Without limiting the foregoing, Licensee's Attachment design shall allow adequate climbing space for City personnel.

4.6 Changes or Modifications to Existing Attachment.

Licensee shall not make any changes or modifications to an existing Attachment that results in an increase in the height of the pole, or that increase the weight or location of Attachments on the pole without having the express written permission from City or as otherwise directed by City, e.g., to accommodate another attacher, to assist in the correction of a safety violation, to transfer to another pole, etc. Except for routine maintenance and in emergencies, Licensee shall make application to City for modifications as provided in Article IV.

ARTICLE V

Unauthorized Attachments

5.1 Unauthorized Attachments.

If Attachment is made after the effective date of this Agreement without required permission and/or without following a procedure which is substantially in accordance with this Agreement, such Attachment shall constitute an "Unauthorized Attachment".

5.2 Application for Unauthorized Attachments.

Upon City's written notice to Licensee specifically identifying the pole and location of any Attachment City claims to be unauthorized, and upon Licensee's written verification acknowledging its ownership, City may, without prejudice to its other rights or remedies under this Agreement, require Licensee to submit a Permit Application within thirty (30) days after the date of Licensee's written or electronic verification acknowledging ownership. If such application is not received by City within the specified time period, Licensee shall immediately remove said Unauthorized Attachment. In the event the Unauthorized Attachment creates an emergency or safety hazard, the City may remove Unauthorized Attachments and the expense of such removal shall be borne by Licensee.

5.3 Failure to Act.

No act or failure to act by City with regard to Section 5.2 shall be deemed a ratification or grant of permission to Licensee to attach the Unauthorized Attachment. If any permission is subsequently issued, said permission shall not operate retroactively or constitute a waiver by City of any of its rights under this Agreement; provided, however, that Licensee shall be subject to all charges, liabilities, obligations and responsibilities of this Agreement in regard to any unauthorized Attachment.

ARTICLE VI

Identification of Facilities

6.1 Identification of Facilities.

Licensee shall identify, by such method as the City must approve, all of their facilities attached to City's poles. This identification shall begin with new attachments when this Agreement is signed. No tag, brand, or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of City, except such tag or insignia which shows Licensee to be a user of such pole and not the owner thereof, and then only after obtaining the written consent of City.

ARTICLE VII

Easements and Rights of Way

7.1 No Warranty.

City does not warrant or assure to Licensee any right of way privilege or easements or that City owns a property right which permits attachment, and if Licensee shall at any time be prevented from placing or maintaining its attachment on City's poles, no liability shall attach to City. Each party shall be responsible for obtaining its own easements and rights of way. The attaching Licensee shall solely be responsible to acquire any legally necessary property right to attach from any property owner.

ARTICLE VIII

Maintenance, Replacements, Relocations and Removals

8.1 Inspection of Facilities.

Licensee shall comply with all applicable ordinances, statutes, codes, rules, regulations and standard industry practices regarding inspection of their facilities. City shall have the right to inspect each installation of Licensee's Attachments and to make periodic inspections of all facilities on City poles, including Licensee's facilities, as it deems necessary. Such inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

8.2 Pole Relocation.

Whenever right-of-way, safety, public regulations, or other considerations arise, other than as provided in Section IV herein, making relocation of a pole necessary or advisable, such relocation shall be made by City at its own expense, except each party shall pay the cost of transferring its own attachments.

8.3 Relocation of Facilities.

8.3.1 Whenever it is necessary in City's sole judgment to replace or relocate a pole, City shall, except in emergencies, before making such replacement or relocation, give Licensee at least thirty (30) days' written notice thereof specifying in such notice the time of such replacement or relocation. In an emergency, verbal or electronic notice will be attempted (*except after hours emergencies for which no notice is required*), and any emergency action taken will be subsequently confirmed in writing.

8.3.2 Placement of relocated poles shall be at the sole operational discretion of City, although, where possible, consideration shall be given to a pole placement that results in the least cost to City and Licensee. Notwithstanding this section, City shall not be liable to Licensee for the cost of relocating its facilities on a replaced or relocated pole. Each party shall bear the cost of transferring its own attachments.

8.3.3. City shall provide Licensee with written or electronic notification at such time as sufficient work has been completed to allow the transfer of Licensee's facilities. Licensee shall transfer its Attachments within sixty (60) days of said notification unless other circumstances arise making the sixty (30) day requirement impossible, City will notify Licensor in writing as to when the work will be completed. Should Licensee fail to transfer its Attachments to the new or relocated pole in the time specified, or if the failure to transfer said attachments results in an emergency or safety hazard, City may transfer Licensee's facilities, and Licensee shall pay City the cost thereof. In the event Licensee fails to transfer its Attachments in a timely manner and City does such work, City shall not be liable for any loss or damage, including incidental and consequential damages or lost revenues to Licensee's facilities or business which may result, except where such damages are caused by City's negligence or willful misconduct. City shall notify Licensee of such transfers following the work.

8.4 Condition of Attachments.

Except as otherwise provided, each party shall at all times maintain all of its property and Attachments in accordance this Agreement and shall keep them in good repair.

8.5 Non-Conformance with Specifications.

Should the City discover, at any time, an Attachment that is permitted, but otherwise in violation of the safety requirements or the terms and conditions of this agreement, including

an Attachment that may have been conforming at one time but that Licensee caused to come out of compliance, the City shall notify Licensee, and excepting emergency and/or safety situations, Licensee shall cure the non-conformity within thirty (30) days of receipt of such written or electronic notification. Notwithstanding the foregoing, if the Licensee believes that the nonconformity is not curable within such thirty (30) day period, upon consent of the City (said consent to not unreasonably be withheld) the period will be extended so long as Licensee substantially commences to cure such non-conformity and proceeds diligently thereafter to effect such cure. In those situations where Licensee's failure to conform to the terms and conditions of this agreement is deemed by the City to result in an emergency and or safety hazard, the City may immediately remove Licensee's facilities at Licensee's sole risk and expense. Nothing in this section shall require Licensee to conform existing Attachments to new or revised code specifications where the applicable code does not so require, including any new or revised specifications of the City. In all circumstances, NESC grandfathering rules shall apply to any and all safety standards and existing Attachments.

8.6 Licensee Assumption of Responsibility.

Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. City disclaims any warranty or representation regarding the condition and safety of the poles of City. Licensee's employees or contractors shall take all reasonable steps to ensure that a pole is safe to be used or climbed upon and in the event of doubt, shall not proceed and shall seek reasonable assistance. Regardless of whether contact has been made by City or not, any pole that is marked with an orange "X" is deemed unsafe to climb or have any objects, such as a ladder, leaned up against it.

8.7 Replacement of Deteriorated Poles Without Attachments.

Should City replace any poles because of deterioration or the requirements of public authorities or property owners, or in City's sole judgment for the benefit of its system, and should Licensee desire to occupy the new pole, Licensee shall reimburse City for the cost of any increment of pole height or strength provided specifically for Licensee's sole requirements over and above the pole height and strength required by City.

8.8 Increased Pole Space Requirements.

Should City replace any poles because of increased requirements of more than one pole occupant, including Licensee, but not Licensor, Licensee shall be responsible for its transfer costs from the old pole to the new pole and for the costs of City on a pro rata basis with other pole licensees. In any case where facilities of City or of others are required to be rearranged on the poles of City to accommodate the Attachments of Licensee, Licensee shall pay to City the total cost incurred by City in rearranging such facilities. In any case where Licensee's facilities are required to be rearranged to accommodate the Attachments of a third-party, City shall first notify the third party of the existence of Licensee's facilities and shall require proof from the third-party attacher that satisfactory arrangements have been

made with Licensee for reimbursement of any expense occasioned by the third-party's request.

8.9 Noninterference with City Circuits.

Licensee expressly agrees that City's circuits are to continue in normal operation during Licensee's performance of any construction or maintenance, and that Licensee is to provide and use all protective equipment necessary for the protection of the public, the City, and Licensee's employees, contractors, and equipment, and Licensee shall guard against interference with normal operation of City's circuits.

ARTICLE IX

Abandonment of Poles and Removal of Attachments

9.1 Notice.

Licensee may at any time remove its facilities from any of City's poles and, in such case, Licensee shall immediately give City written or electronic notice of such removal identifying from what locations and on what date equipment was removed. Removal of said facilities from any of City's poles shall constitute a termination of Licensee's permit to use such poles.

9.2 Pole Abandonment

If City desires at any time to abandon any pole(s), it shall give Licensee notice writing or in electronic form to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole(s). If Licensee desires to maintain its Attachments, then Licensee shall notify City and City shall, when feasible, negotiate in good faith mutually acceptable terms and conditions for the sale of the pole(s) to Licensee. If Licensee does not desire to maintain its Attachments, then Licensee shall remove its Attachments prior to the date on which City intends to abandon the pole(s). If, at the expiration of such notice period, Licensee has not removed all of its Attachments from such poles, City may remove Licensee's Attachments and charge Licensee a reasonable fee for such removal.

9.2.1 Should Licensee buy the pole, as specified herein, Licensee agrees and understands that it shall assume total responsibility for, and hold City harmless therefrom, maintenance, replacement and/or disposal requirements mandated by local, state and/or federal law. Licensee recognizes and acknowledges that it is taking title to the pole for all purposes. Licensee further recognizes and acknowledges that utility poles and related items may contain various hazardous chemicals or properties and that Licensee shall become familiar with the terms of the appropriate material safety data sheet and agrees to comply with such terms and all directions contained therein or otherwise required by local, state and/or federal law regarding the maintenance, replacement and/or disposal of the pole. Licensee also understands the City does not warrant, guarantee or imply that such

poles possess sufficient mechanical strength as required by any use of Licensee. Additionally, Licensee agrees and understands the City makes no representations or guarantees concerning any right to occupy the premises where the pole is currently located upon the removal of City's facilities.

ARTICLE X

Rentals, Charges and Rates

10.1 Rental Rate.

Licensee shall pay to City rental fees on an annual basis, in accordance with the fee schedule established by the Common Council from time to time pursuant to applicable law. Rental shall be calculated on a per-pole basis, for any Attachments existing as of December 31. There shall be no prorating of rentals for partial years.

10.2 Billings.

Annual invoices shall be rendered on or about October 1 of each year based on the number of City poles with Licensee Attachments existing as of December 31 of the prior year. Invoices shall be considered delinquent if undisputed amounts are not paid within thirty (30) days of receipt of the invoice. Nonpayment of any amount due under this Section shall constitute a default of this Agreement if such amount remains unpaid thirty (30) days after receipt of written notice of such nonpayment. Notwithstanding the foregoing, in the event of a bona fide dispute regarding the amount owed by Licensee, Licensee shall promptly pay any amounts undisputed from the total billing, and shall immediately set forth, with as much specificity as possible, the basis for disputing any portion of the billing.

10.3 Pole Inventory.

Licensee and City shall agree, on an annual basis, but no later than by September 1 of each year, the total number of poles which Licensee Attachments occupy.

10.4 Physical Inventory.

Licensee and City shall maintain an inventory of the total number of poles occupied by Licensee Attachments and all future rental fees shall be based on such physical inventory. City shall have the right to conduct a physical inventory of Licensee's Attachments on City poles. Licensee shall notify City if Licensee chooses to have a representative present during the inventory process. A physical inventory shall be taken no more frequently than once every five (5) years; provided, however, that City may request and require a physical inventory to

be taken more frequently in the event Licensee has been found to be making unauthorized attachments.

10.5 Inventory from Plant Records.

As an alternative to performance of the physical inventory, the parties may, if mutually agreeable, determine the number of occupied poles from the number of permits approved and/or from existing maps and/or Attachment records provided that such maps or records exist and provided that each party agrees that results with reasonable accuracy can be achieved. If the parties agree to this method, any maps and/or records belonging to one of the parties and utilized to count the number of poles occupied by Licensee Attachments shall be made accessible to the other party and the number of poles occupied by Licensee Attachments shall be determined through a mutual and cooperative effort of both parties. The results of the pole counts performed in this manner shall be treated, for the purpose of determining rentals and other charges due for unauthorized Attachments, as if results were achieved by the actual physical inventory.

10.6 Payment.

Unless specifically provided for elsewhere in this Agreement, all undisputed non-rental amounts payable under this Agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within thirty (30) days of billing by City. Licensee shall immediately set forth, with as much specificity as possible, the basis for disputing any portion of the billing.

ARTICLE XI

Safety

11.1 Inspections.

City shall have the right to inspect each new installation of Licensee's facilities upon such poles and to make periodic inspections of all the facilities on its poles, including City's and Licensee's, as it deems reasonably necessary. Such inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

11.2 Conflicts with Electric Lines.

City shall provide Licensee written or electronic notice of any ordinance, statute, code, rule or regulation violation it discovers. Ordinance, statute, code, rule or regulation violations and conflicts with electric lines shall be corrected in a prompt manner by Licensee if Licensee created the violation or conflict. In some instances, ordinances, statutes, codes, rules, or regulations may require that qualified electrical workers perform the work. In that event, Licensee shall either hire qualified contractors or pay City to perform the work.

Failure by Licensee to act in a prompt and responsible manner may result in City taking appropriate measures to correct the safety violations created by Licensee and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by ordinance, statute, code, or administrative rules and regulations.

ARTICLE XII

12.1 Duty of Care; Reimbursement for Damages.

Each party shall exercise precautions to avoid causing damage to the other party's poles, facilities and equipment, and shall assume all responsibility for such damage to the extent said damages were caused by the party's negligence or intentional conduct. In the event damage is caused, the responsible party shall make an immediate report of the occurrence to the other party and shall reimburse the other party under this section no later than thirty (30) days from receipt of the invoice(s) arising out of the occurrence of such damages.

ARTICLE XIII

Third Party Uses

13.1 Noninterference.

Nothing contained herein shall be construed as affecting any rights or privileges conferred by City, by contract or otherwise, to others not a party to this Agreement to use any facilities or poles covered by this Agreement. City shall have the right to continue to extend such rights and privileges. The rights granted herein to the Licensee may be affected by contracts and arrangements made prior to entry into this agreement. Should any other party claim a prior right covered by this Agreement, and such claim be upheld by a court of proper jurisdiction, Licensee shall make no claim against City for damages, or otherwise, on account thereof.

ARTICLE XIV

Indemnification and Insurance

14.1 Indemnification.

Each party shall indemnify, protect, and save harmless the other party from and against any and all claims and demands of any kind or nature arising out of or relating to this agreement for damages to property and for injury or death to persons, (including payments made under any Workers' Compensation Law or under any plan for employees'

disability and death benefits), sustained as a consequence of that party's negligence or intentional conduct, including any claims or damages for failure to acquire a property right or authority to attach or permit attachment to City's poles. Such obligation to indemnify, protect, and save harmless shall include, but not be limited to all expenses incurred in defending against any such claims or demands, including reasonable attorneys' fees, expert fees and other costs of defense.

14.2 Insurance Requirements.

While this Agreement is in effect Licensee shall carry and keep in force insurance policies with a reliable company licensed to do business in the State of Wisconsin to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result directly or indirectly from Licensee's activities under this Agreement which policies shall be in amounts no less than the following minimum requirements:

14.2.1 Commercial general liability insurance (including coverage for motor vehicle operation) and independent contractors' insurance, with minimum limits of \$2 million each occurrence and \$5 million aggregate, including coverage for contractual liability insurance. City shall be a named insured on said policy.

14.2.2 Workers' compensation insurance in compliance with the laws of the State of Wisconsin, and employer's liability insurance with minimum limits of \$500,000.

14.2.3 Licensee shall furnish City with certificates of insurance showing that such insurance is in force and Licensee will ensure such insurance will not be canceled without thirty (30) days written notice to the City Administrator or his/her designee. In the alternative, Licensee shall demonstrate to the satisfaction of City that it is self-insured and that any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance.

ARTICLE XV

Term of Agreement

15.1 Five Year Term; Termination.

This Agreement shall become effective as of the year and date first written above and shall continue in effect for a term of five (5) years, subject to annual rate revisions pursuant to Section 10.1. Thereafter, this Agreement shall automatically renew from year to year unless terminated by either party by giving written notice of its intention to do so not

less than 90 days prior to the end of any term. Upon termination of this Agreement, and if the parties are negotiating a successor agreement, the terms of this Agreement shall continue to apply to Licensee's Pole Attachments and service drop contacts in place on City poles as of the termination date, unless and until a successor agreement has been executed.

15.2 Survival of Obligations.

Termination of this Agreement in whole or in part shall not release the parties from any liability or obligation hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination.

ARTICLE XVI

Default

16.1 Notice of Default; Cure

Subject to any remedies allowed for in Sections 4.4, 5.2, 8.3, 8.5, 9.2, 10.2, and 10.6 herein, if Licensee shall fail to comply with any material provision of this Agreement or should default in any of its obligations under this Agreement, and Licensee shall fail within thirty (30) days after receipt of written notice from City to correct or undertake to correct with reasonable diligence such noncompliance or default, City may at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the license covering the Attachment or Attachments in respect to which such default or noncompliance shall have occurred. If the default is of such a nature that it cannot be corrected within such thirty (30) days, Licensee's obligation hereunder is satisfied if Licensee, within such thirty (30) days, submits in writing a reasonable plan and work schedule and commitment to finish the correction promptly.

ARTICLE XVII

Ownership Rights

17.1 License Only.

Except as expressly stated otherwise herein, no use, however extended, of any of the facilities under this Agreement shall create or vest in Licensee any ownership or property rights therein, but Licensee's rights therein shall be and remain a mere license.

ARTICLE XVIII

Notices

18.1 Delivery.

Unless otherwise provided in this Agreement, any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the City Clerk in the case of notice to be given to City, or personally delivered to the office of Licensee in the case of notice to be given to Licensee; (b) received by a party after being deposited in the United States Mail, Return Receipt Requested, (c) received by a party after being sent by a reputable overnight courier, and properly addressed to the party, or (d) electronic mail, to be served to the intended party as follows:

(a) If notice is to City:

City Clerk:

31 S. Madison Street
PO Box 529
Evansville, WI 53536

(b) If notice is to Licensee:

TDS Metrocom, LLC
Attn:
Field Services Compliance Team
525 Junction Rd
Madison, WI 53717

For Legal Notices:

TDS Metrocom, LLC
Attention Legal Counsel
525 Junction Rd
Madison, WI 53717

ARTICLE XIX

Supplemental Agreements

19.1 Changes.

This Agreement may be amended or supplemented only upon written agreement by the parties hereto.

ARTICLE XX

Payment of Taxes

20.1 Each party shall pay all taxes and assessments lawfully levied on its own property upon City's poles.

20.2 Licensee agrees that if any tax, fee or charge is levied against City solely due to Licensee's equipment or facilities being on City's poles, Licensee will reimburse City the full amount of said tax, fee, or charge.

ARTICLE XXI

Supplying Information

21.1 Changes.

Licensee shall promptly report to City any changes made in the number of Licensee's attachments to City's poles, as required herein.

ARTICLE XXII

Waiver of Terms or Conditions

22.1 Waiver.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall remain at all times in full force and effect.

ARTICLE XXIII

Construction of Agreement

23.1 Wisconsin Law Shall Apply.

This Agreement is deemed executed in the State of Wisconsin and shall be construed under the laws of the State of Wisconsin.

23.2 Venue for Litigation.

In the event suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that proper venue for said action or suit shall lie in the Circuit Court, County of Rock, State of Wisconsin.

ARTICLE XXIV

24.1 Compliance with Laws and Administrative Rules.

The parties agree that, in the performance of this Agreement, each party shall comply with and be subject to all federal, state and local governmental rules and regulations.

IN WITNESS WHEREOF, the parties executed this Agreement as of the first date set forth above.

City of Evansville

By: _____ Date: _____

City of Evansville, Director of Municipal Services

TDS Metrocom, LLC,

By: _____ Date: _____

TDS Metrocom, LLC - Andrew Buchert, Vice President - Field Services