

RIGHTS-OF-WAY AND POLE ATTACHMENT AGREEMENT

This Rights-of-Way and Pole Attachment Agreement ("Agreement") is entered into between the City of Oconomowoc, Wisconsin ("City") and Wisconsin Technology Networking, LLC ("WITN") and its successors and assigns as of May 2, 2017 ("Effective Date").

WHEREAS, WITN wishes to access certain portions of the public rights-of-way within the City's territorial boundaries ("Rights-of-Way") to provide communications services; and

WHEREAS, the City wishes to enable WITN to provide those services to benefit its residents;

NOW, THEREFORE, the parties agree as follows:

1. **Facilities.** WITN's use of the Rights-of-Way will be to install, maintain, operate, repair, modify, replace, and/or remove from time to time certain communications facilities ("Facilities") which are used for the purpose of providing communications services. Facilities may include antennas, radios, wireless microwave and other backhaul equipment, fiber optic cables, conduit, ducts, control boxes, vaults, poles, cables, power sources, and/or other equipment, structures, appurtenances, and improvements.
2. **Grant of License.** City and WITN agree and acknowledge that City shall grant WITN certain licenses from time to time to (i) use and attach to existing City poles, or (ii) install new poles, subject to the terms and conditions of this Agreement. If at any time WITN wishes to use and attach to an existing Pole or construct a new Pole WITN shall submit to the City plans indicating the proposed Pole location, height, and materials, describing the Facilities to be attached thereto and providing such additional information as the City reasonable requires (the "Plans"). The City Planner/Zoning Administrator shall have sixty (60) days to review the Plans and approve or deny the same. If approved, the City Planner/Zoning Administrator shall (i) list the Pole on Exhibit A attached hereto; and (ii) provide WITN with written notice of approval, including a copy of such revised Exhibit A. At such time, this Agreement shall automatically be deemed amended to include the additional Pole and the parties rights and responsibilities pursuant to this Agreement shall automatically extend and apply to such Pole. If denied, the City shall specify the reasons for denial. Following such denial, WITN may amend and re-submit the Plans for further review by the City Planner/Zoning Administrator. WITN shall not commence construction on a given Pole until it has received City's written approval of such Pole.
3. **Pole Construction and Ownership.** If a structural analysis determines that that the Pole is not structurally able to support WITN's Facilities, then WITN at WITN's sole expense, shall construct and install a new pole in the location approved by City (the "New Pole"). Immediately upon City's approval of the full installation of the New

Pole, all ownership of the New Pole shall transfer to the free and clear of all liens or claims, with no further action required of either party to accomplish the ownership transfer, and this Agreement shall serve as the bill of sale, provided however, that WITN shall be deemed to have made no representation or warranty regarding such New Pole in connection with such ownership transfer. Upon City's acceptance, City may attach, and may authorize others to attach, such wires, cables, conduit, ducts, control boxes, vaults, power sources, and/or other equipment, structures, appurtenances, and improvements to the New Pole as City deems appropriate, subject only to the terms of this Agreement. Notwithstanding any term of this Section 3 to the contrary, the City is and shall remain the Owner of the New Pole and shall be responsible for maintaining, repairing and replacing the Pole.

4. WITN's use of the Rights-of-Way will be consistent with the City's rights-of-way management regulations and all applicable local, state and federal laws and regulations.
5. To recoup the City's costs for issuing permits for WITN to attach Facilities to an existing City pole or to install a new pole and attach Facilities to such pole, WITN shall pay to the City a one-time permit fee in the amount of \$500.00 for each such existing or new pole. To recoup the City's costs for issuing permits for WITN to install Facilities such as fiber optic cable and conduit anywhere in the City, WITN shall pay to the City a one-time permit fee in the amount of \$500.00. Other than as required pursuant to Paragraph 9 hereof, WITN shall not be obligated to pay any other permit fees.
6. In addition, WITN shall pay to the City an annual fee in the amount of \$1000.00 for each Pole or New Pole to which WITN attaches Facilities and any associated fiber or other Facilities (the "Annual Fee"). If any Pole or New Pole is approved by an amendment to Exhibit A as described in Section 2, the Annual Fee as used herein shall mean \$1,000, adjusted per Section 7, multiplied by the total number of Poles and New Poles that are the subject of this Agreement per the amended Exhibit A WITN's obligation to pay this Annual Fee will commence on the first day of the month following the date of installation of the first Pole or New Pole that is subject to this Agreement (the "Rent Date"), and the initial payment thereof will be made payable to the City within thirty (30) days after installation. Each subsequent payment will be made upon each anniversary of the Rent Date, until such time that the applicable Facilities are removed in accordance with this Agreement or this Agreement is otherwise terminated as further provided herein. The fee in the first year for any location added between annual Rent Dates shall be paid in an amount prorated for the portion of the Rent Date year that the Facility was installed, within thirty (30) days after installation. Annual Fees shall be made payable in the form of a money transfer or check to the City. All Annual Fees paid prior to the expiration or earlier termination of this Agreement or removal of the applicable Facilities by WITN shall be retained by the City. Other than as required pursuant to Paragraph 9 hereof, WITN shall not be obligated to pay any other annual or recurring fees.

7. **Adjusted Rent.** The Annual Fee shall annually be increased by 3% over the Annual Fee in effect the immediately preceding year. Such increase shall be made and adjusted as of each annual anniversary date of the effective date of the agreement.
8. Should WITN seek to attach Facilities to a pole in the Rights-of-Way which is owned by a third party, WITN shall obtain all authorizations and approvals from such third party.
9. WITN will obtain any other permits and pay any other fees applicable to WITN's use of the Rights-of-Way only as required under the City's rights-of-way management regulations and/or any other applicable local, state or federal regulation, including, without limitation, those designed to protect structures in the Rights-of-Way, to ensure the proper restoration of the Rights-of-Way and any structures located therein, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the safety of the public's utilization of the Rights-of-Way.
10. In accordance with the City's regulations, WITN will submit to the City design drawings and specifications of the Facilities and their proposed locations within the Rights-of-Way (whether installed subsurface and/or attached to poles or other structures owned by the City, WITN, or a third party).
11. WITN may remove one or more Facilities from time to time during the term, in which event WITN shall provide advance notice thereof to the City and WITN shall have no further obligations or liability (including for the payment of any applicable recurring fees) in connection therewith.
12. If WITN ceases use of the Pole, it shall remove such Facilities at its own expense.
13. Facilities shall not physically interfere with or cause harmful interference to the City's existing radio facilities located on City poles. The City shall not physically interfere with or cause harmful interference to Facilities installed by WITN. WITN shall coordinate with the City on any maintenance of City poles so as not to obstruct or impede the City's performance of such maintenance. WITN shall provide the City with a telephone number that the City can contact to request WITN's coordination pursuant to this paragraph.
14. The term of this Agreement shall be for ten (10) years commencing on the date hereof, and shall automatically renew for four (4) additional five (5) year periods thereafter, unless WITN notifies the City of its intent not to renew at least ninety (90) days prior to the end of the then current term. Notwithstanding the foregoing, either party may terminate this Agreement in the event a party materially breaches a provision herein and the breach is not cured within sixty (60) days after receipt of written notice thereof from

the non-breaching party. If the nature of the breach reasonably requires more than sixty (60) days to cure, the breaching party will not be in default hereunder if such party promptly commences such cure and is diligently pursuing the same.

15. Notwithstanding anything contained in this Agreement to the contrary, WITN shall not be required to obtain any permit, pay any fee or be subject to any requirement or condition that does not generally apply to all other occupants of the Rights-of-Way.
16. If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the effective date and such change makes any aspect of such rights or obligations in violation of the then-effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.
17. Indemnification. WITN shall defend, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, whether existing now or in the future, and their respective officials, officers, departments, agencies, boards, representatives, employees, agents, contractors and attorneys (collectively, "Indemnified Parties") against any and all liability, claims, costs, damages, expenses, demands, lawsuits or disputes (including reasonable attorneys' fees of counsel selected by WITN and reasonably acceptable to City and all other costs and expenses of litigation)(collectively, the "Indemnified Losses") arising directly from (i) any condition, occurrence or accident arising due to WITN's exercise of rights or performance of its duties under this Agreement which causes injury or illness to any person or persons whomsoever or to any property whatsoever, arising directly from the installation, presence, operation, maintenance or removal of the improvements, except to the extent caused by the intentional acts or omissions or negligence of City, its agents or employees; (ii) work, labor, material or supplies provided or supplied to WITN, its contractors or subcontractors, for the installation construction, operation, maintenance or use of the Pole, including any claim or lien arising therefrom; (iii) WITN's material breach of any warranty, representation, obligation or other provision of this Agreement; and (iv) any financing or securities offering by WITN or its affiliates, for violations of common law or any laws, statutes, or regulations of the State of Wisconsin or United States, including those of the Federal Securities and Exchange Commission by WITN. This indemnification language specifically includes, among other things, any and all liability related to or associated with exposure to electromagnetic fields or radio frequencies caused by WITN or its officers, representatives, employees, or agents. Notwithstanding any term of this Section 19 to the contrary, WITN shall have no obligation to indemnify, defend or hold harmless to the extent any Indemnified Losses result from the willful misconduct or negligence of the City.

18. Insurance.

- a. **General.** At all times during the term of this Agreement, WITN shall keep in force and effect all insurance policies as outlined below, issued by a company or companies licensed to do business in the State of Wisconsin and A.M. Best A rated or better and class VII size or larger. Such insurance will be primary. All contractors and all of their subcontractors who perform work on the Property shall carry, in full force and effect, worker's compensation, comprehensive general liability and automobile liability insurance coverages of the type that WITN is required to obtain under this paragraph with the same limits. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, WITN will furnish City with a Certificate of Insurance. The Certificate shall reference this Agreement and worker's compensation insurance waivers of subrogation required by this Agreement. The City will be given thirty (30) days advance notice of cancellation or non-renewal of insurance during the term of this Agreement. City, its council, boards, commissions, agencies, officers, employees and representatives (collectively "Additional Insureds") shall be named as additional insureds under all of the policies, except worker's compensation insurance policies, which shall be so stated on the Certificate of Insurance. All policies, other than worker's compensation, shall be written on an occurrence and not on a claims made basis. WITN shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this paragraph.
- b. **Worker's Compensation and Employers' Liability Insurance.** Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than \$100,000 each accident, \$100,000 each claim by disease, and \$500,000 policy limit. WITN shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- c. **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: Property and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCU coverage). Limits of liability not less than \$1,000,000 general aggregate, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal and advertising injury, \$1,000,000 each occurrence. Coverage shall not contain a standard form pollution exclusion, nor shall it exclude claims or suits that arise from the effects of electromagnetic field or radiation.

- d. **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
 - e. **Umbrella Liability Insurance.** Coverage to be in excess of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$5,000,000 each occurrence, \$5,000,000 aggregate.
 - f. **The aforesaid limits of liability may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease City's or WITN's exposure to risk.**
 - g. **Worker's Compensation Waiver of Subrogation.** City shall not be liable to WITN, or WITN's employees, contractors or subcontractors (collectively, the "WITN Parties"), for any injuries arising out of or in connection with the grant of this Agreement, including any and all work of any type performed upon the Property, including injuries arising during equipment installation, alteration, modification, improvement, maintenance, repair, replacement, or use, or ingress or egress to or from the Property, or the condition of the Property unless caused primarily by the intentional acts or omissions or gross negligence of City, its agents or employees and WITN hereby waives all such liability on behalf of WITN and the WITN Parties. For purposes of this Agreement, "gross negligence" shall mean any willful, wanton or reckless disregard of rights or safety.
19. **Default.** WITN shall be deemed in default hereunder upon occurrence of any of the following events: (a) WITN defaults in the payment of the Agreement fee or any other sums to City when due, and does not cure that default within sixty (60) days of City providing written notice of default upon WITN; (b) WITN defaults in the performance of any other term of this Agreement and does not cure that default within sixty (60) days after written notice thereof by City, provided that such period shall be extended as reasonably necessary in the event that WITN is proceeding in good faith with due diligence to cure such default but is unable to do so within sixty (60) days; (c) WITN abandons or vacates the Pole where abandons shall mean fails to operate the Facilities for a continuous period of six (6) months without making reasonable efforts to market the Facilities and fails to pay the WITN fee; (d) WITN files for relief under federal bankruptcy laws or makes any assignment for the benefit of creditors; or (e) WITN becomes insolvent.

20. Remedies on Default. In the event of any default by either party, such non-defaulting party may, in addition to any other remedy it may have under law, serve a written notice upon the defaulting party that the non-defaulting party elects to terminate this Agreement upon a specified date not less than ten (10) calendar days after the date of serving such notice, and this Agreement shall expire on the date so specified as if the date had been originally fixed as the expiration date of the term granted herein. In the event this Agreement is so terminated by City as a result of an uncured WITN default, City shall retain all prepaid consideration and shall be entitled to collect the Annual Fee until such time as WITN removes its Facilities.
21. Environmental Covenants and Indemnity. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste which is, or becomes designated as such in the future or is regulated by any agency of the United States Government or by any local governmental authority having jurisdiction, including, without limitation, any substance, material or waste that is defined or designated as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or the Clean Water Act. During the term of this Agreement, WITN shall cause the presence, use, storage and/or disposal of any Hazardous Material, on or under the Pole by WITN, its agents, employees, business invitees, or contractors to be in compliance with all applicable laws, rules, regulations and orders. WITN shall defend, indemnify, protect and hold City harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, arising out of or in connection with the presence, storage, use or disposal of Hazardous Materials on or under the Pole caused by the acts, omissions or negligence of WITN, its employees, business invitees, or contractors. The foregoing indemnity shall survive any termination of this Agreement.
22. Compliance with Laws and Emission Standards. Throughout the term of this Agreement, WITN shall continuously use the Pole for the purpose of constructing, maintaining and operating the Facilities. WITN, at its expense, shall diligently, faithfully and promptly obey and comply with all federal, state and local orders, rules, regulations and laws, including all Federal Communications Commission ("FCC") and Federal Aviation Administration rules, in relation to any of its business activities or other operations conducted upon, above or adjacent to the Pole and including the American National Standards Institute's ("ANSI") Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields" as set forth in the current ANSI standard or any FCC standard which supersedes this standard or any EPA rules or regulations that may hereinafter be adopted which supersede this standard. In the event that any of the above orders, rules, regulations, or laws have conflicting standards, WITN shall be required to

comply with the most restrictive standard. WITN shall pay, as they become due and payable, all fees, charges, taxes and expenses required for Agreements and permits required for WITN's use of the Pole.

23. **Co-Location**. The Facilities shall be designed to allow for fully functioning antennas to be installed at appropriate heights for co-location, and use of the space on the ground shall also be planned and designed to allow for co-location.
24. **Non-interference**. WITN warrants and represents that the Facilities and the installation, operation and maintenance of the Facilities shall not interfere with the operation of City's existing electronic equipment, wherever located on the Property, or with the electronic equipment of any other of City's existing licensees and lessees, wherever located as of the effective date of the Agreement. In the event of alleged interference with such City equipment or equipment of existing City's licensees or lessees, WITN shall promptly investigate the same, at its expense, upon receipt of notice from City alleging such interference. If investigation reveals that WITN is causing the interference, WITN shall promptly take all commercially reasonable steps necessary to eliminate the interference at WITN's cost. If WITN is unable to eliminate the interference within a reasonable period of time, WITN shall have the option to require the interfering party remove its equipment causing such interference or terminate this Agreement and remove the Facilities from the Pole.
25. **No warranty**. City makes no warranties or representations that the Pole or any aspect of WITN's use of City's right of way are fit for WITN's intended use and all such warranties and representations are hereby disclaimed.
26. **Damage**. Any damage done to City property during installation or during operations, which is due to WITN's intentional or negligent acts or omissions, shall be immediately repaired at WITN's expense and to City's reasonable satisfaction. WITN shall not permit any claim or lien to be placed against any part of the Pole that arises out of work, labor, material or supplies provided or supplied to WITN, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Pole or Facilities.
27. **Studies**. Prior to the initial installation of equipment on the Pole, the WITN shall provide City studies consistent with federal requirements to determine whether such WITN's proposed installation will interfere with the electronic equipment of the City or other existing uses. City shall provide such objections within fourteen (14) days of receipt of such WITN's studies. If no objection is made by City during such time, the WITN may proceed with its installation. Prior to the installation of any additional equipment or replacement equipment on the Pole which is significantly greater in size, weight or

volume than the existing equipment, WITN will also provide City with a Wisconsin PE stamped structural engineering study to determine whether the proposed installation or modification will adversely affect the structural integrity of any part of the Pole.

28. Limitations. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of the provisions of Section 893.80 of the Wisconsin Statutes or other applicable limits on municipal liability.
29. No Nuisances. WITN shall not knowingly perform any acts or carry on any practices upon the Pole or other City property which may endanger or injure the City property, Pole, or surrounding area or any person or be a nuisance or menace to adjoining property owners and shall keep the City property free and clear of debris, rubbish, junk and garbage
30. Reimbursement of Costs. WITN shall reimburse City for all actual and reasonable costs and expenses City incurs in connection with negotiation and execution of this Agreement or any City approval required hereunder, including engineering, legal and other consulting fees within thirty (30) days of receipt of an invoice including reasonable back up documentation identifying and the actual, reasonable costs. Such costs include, without limitation by reason of enumeration, design, engineering, review, supervision and inspection and legal, administrative and fiscal work, at all times including for the drafting and negotiation of this Agreement. All reasonable and actual costs incurred by City in preparing the Pole for WITN's Facilities, including removal of materials and clearing the Pole for construction, shall be subject to this reimbursement obligation.
31. Regulatory Filings. Upon City's written request, which shall be made not more than once per year, WITN shall provide City with copies of all petitions, applications, reports and filings submitted by WITN to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting this Agreement or WITN's operation of its Facilities.
32. Estoppel Certificate. Either party shall, at any time and from time to time upon not less than ten (10) days prior request deliver to the other party a statement in writing certifying that (i) this Agreement is unmodified and in full force (or if there have been modifications, that the Agreement is in full force as modified and identifying the modifications); (ii) the dates to which the Agreement fee and other charges hereunder have been paid; (iii) so far as the person making the certificate knows, such party is not in default under any provision of this Agreement beyond any applicable cure period set forth hereunder; and (iv) such other matters as either party may reasonably request.

33. **No Limitation of Authority.** Nothing contained in this Agreement shall limit or interfere with or be construed to limit or interfere with any of the City's rights or powers as a municipal government, including the City's authority in enforcement of its municipal ordinances, including its zoning code, unless specifically and explicitly granted to WITN in this Agreement contrary to City's rights and powers.
34. **Termination of Agreement.** Within one hundred eighty (180) days of earlier termination or expiration of this Agreement, WITN shall at its expense, promptly and diligently, remove all of the WITN's improvements that are located on the Pole to the satisfaction of City.
35. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail, postage prepaid, or by commercial overnight courier. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

If to City:

City of Oconomowoc
 174 E. Wisconsin Avenue
 P.O. Box 27
 Oconomowoc, WI 53066
 Attn: Planning and Zoning Dept.

With a copy to:

City of Oconomowoc
 174 E. Wisconsin Avenue
 P.O. Box 27
 Oconomowoc, WI 53066
 Attn: City Clerk

If to WITN:

Wisconsin Technology Networking, LLC
 660 Newport Center Drive
 Newport Beach, CA 92660
 Attn: Asset Management

With a copy to:

Wisconsin Technology Networking, LLC
 660 Newport Center Drive
 Newport Beach, CA 92660
 Attn: Legal Department

36. The provisions of this Agreement shall be construed under, and in accordance with, the laws of the State of Wisconsin, without regard to its conflict-of-laws principles, and all obligations of the parties created hereunder shall be performed in the County in which the City is located. Therefore, in the event any court action is brought directly or indirectly by reason of this Agreement, the courts of such County shall have jurisdiction over the dispute and venue shall be in such County.
37. If any law, ordinance, regulation, or court decision renders any provision of this Agreement invalid, the remaining provisions shall remain in full force and effect. The failure of either party to enforce its rights under this Agreement at any time for any period

shall not be construed as a waiver of such rights. This Agreement is the complete and exclusive statement of the parties' agreement with respect to the subject matter and supersedes all other oral and written agreements or communications between the parties prior to the execution of this Agreement relating to this subject matter. This Agreement will not be deemed to provide third parties with any remedy, claim, right of action or other right. This Agreement may be executed and delivered in multiple counterparts, each of which is an original.

38. This Agreement shall take effect on the date that is the later of the dates on which each of the parties have executed this Agreement.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement as of the dates below.

CITY OF OCONOMOWOC

WISCONSIN TECHNOLOGY
NETWORKING, LLC

David Nold

Mayor David Nold

[Signature]

Signature

Attest:

Diane Coenen

Diane Coenen, City Clerk

CHRISTOPHER GLASS

Name

CVP, GENERAL COUNSEL

Title

May 9, 2017

Date

5/1/17

Date



Exhibit A

Wisconsin Technology Networking, LLC Right-of-Way and Pole Attachment Agreement

<u>No.</u>	<u>Pole Type</u>	<u>Location</u>	<u>Approval Date</u>
1.	Replace light pole w/ 37' wood pole	Bolson Drive	6/15/17
2.			
3.			
4.			
5.			