

## RIGHTS-OF-WAY AND POLE ATTACHMENT AGREEMENT

This Rights-of-Way and Pole Attachment Agreement ("Agreement") is entered into between the City of West Allis, Wisconsin ("City") and Wisconsin Technology Networking, LLC ("WITN") and its successors and assigns.

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 under the terms and conditions set forth below;

NOW, THEREFORE, the parties agree as follows:

1. 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 to provide communications services, Communications services provided by WITN shall include Wi-Fi, voice, data, messaging, or similar type of wireless service now or in the future offered to the public in general using spectrum radio frequencies, whether or not licensed by the Federal Communication Commission ("FCC") or any successor agency. 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. 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.
3. 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 6 hereof, WITN shall not be obligated to pay any other permit fees.
4. In addition, WITN shall pay to the City an annual fee in the amount of \$500.00 for each City pole to which WITN attaches Facilities and any ancillary equipment. WITN's obligation to pay this annual fee will commence on the first day of the month following the date of installation 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 installation date after receipt of an invoice therefor from the City, until such time that the applicable Facilities are removed in accordance with this Agreement or this Agreement is otherwise terminated as further provided herein. 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 6 hereof, WITN shall not be obligated to pay any other annual or recurring fees.
5. 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.
6. 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.

7. 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). Except as provided herein, WITN shall not install or modify Facilities under this Agreement until City approves such Facilities in writing. City shall use reasonable efforts to respond to WITN's construction or modification requests within sixty (60) days of receipt of drawings and specifications depicting the request, which approval shall not be unreasonably withheld, conditioned or delayed. Modifications shall not be subject to additional permitting or authorization from City to the extent that: (i) such modification to the attachment involves only a substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, as previously approved by City; or (ii) such modification involves replacement of the attachment with an attachment that is the same, or smaller in weight and dimensions as the approved attachment.
8. 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.
9. If WITN ceases use of a City pole on which it installed Facilities, it shall remove such Facilities at its own expense. If WITN fails to remove such Facilities after ninety (90) days, City shall have the right, using its own personnel or a contractor, to perform such removal, and WITN agrees to reimburse City for City's reasonable costs of removal. City shall retain such Facilities for a period of thirty (30) days after which they may be disposed of by City in its sole discretion. WITN hereby releases any claim to Facilities so disposed of by City.
10. 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.
11. 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.
12. 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.
13. 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 inconsistent with 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.

14. WITN shall indemnify, defend, and hold harmless, the City and its elected officials, employees, officers, and directors ("Indemnitees"), from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage, made upon or incurred by the City and arising out of a third-party claim to the extent that such third-party claim is caused by any negligent acts or omissions of WITN while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting or arising from the negligence of the City or an Indemnitee. The City shall give prompt written notice to WITN of any claim for which the City seeks indemnification. WITN shall have the right to investigate, defend, and compromise these claims with prompt notice to the City's attorney.
15. Neither party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.
16. WITN shall obtain and maintain in full force and effect for the duration of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance covering WITN against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation, or maintenance of the Facilities, in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability; statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000). The insurance policies shall name the City, as an additional insured, except for the workers' compensation policy. WITN shall furnish copies of the required certificate of insurance and an endorsement and waiving the right to recover against the City, in a form acceptable to the City, naming the City as an additional insured to the City. Such additional insured coverage will be primary with respect to WITN's indemnity obligations hereunder. WITN will provide the City with thirty (30) days' prior written notice of cancellation.
17. 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 West Allis  
7525 West Greenfield Avenue  
West Allis, WI. 53214  
Attn: City Engineer

With a copy to:

n/a

If to WITN:

Wisconsin Technology Networking, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attn: Legal Department

With a copy to:

Wisconsin Technology Networking, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attn: Asset Management

18. 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.

19. 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.

20. 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.

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

CITY OF WEST ALLIS

WISCONSIN TECHNOLOGY NETWORKING, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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Date

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Date