

RADIO SYSTEM COMMUNICATIONS AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into this ___day of _____, 2013 by and between the City of Menasha (City) and the City of Menasha Water and Light Commission (Commission).

The initial term of this Agreement shall be five years commencing on the start of installation of the Equipment. The initial term shall be automatically renewed and extended, upon the same terms and conditions, for additional terms of five years each, unless either party notifies the other, in writing, at least 180 days before the end of a term, of its intention not to permit the Agreement to renew.

WHEREAS, This Agreement is entered into for the benefit of the City and Menasha Utilities; and

WHEREAS, The City of Menasha Water and Light Commission enters into this Agreement with respect to radio communications for the Menasha Electric Utility and Menasha Water Utility each of which is regulated by the Wisconsin Public Service Commission; and

WHEREAS, The City owns Property located at 455 Baldwin St., Menasha, Wisconsin, known as the Public Works Facility; and

WHEREAS, The City has located upon the Public Works Facility property a communications tower (Tower); and

WHEREAS, The City and the Commission desire to place, attach, affix and locate communications equipment and related appurtenances, apparatus and facilities (Equipment) which are more particularly described on SCHEDULE B, attached hereto and made a part of this Agreement, on and near the Tower.

ARTICLE I INSTALLATIONS, MAINTENANCE, AND USE

1.1 Equipment. The City and the Commission set forth herein their agreement with respect to the purchase and installation of Equipment on and near the Tower, ownership, maintenance, use and repair of said Equipment.

The City will be responsible for the purchase and installation of Equipment on and near the Tower as set forth in the 3/1/2012 quote #SBEEQ1038-01 from Nielson Communications Inc., a copy of which is attached as SCHEDULE B.

Each party will be responsible for the purchase and all other costs and expenses incurred for the radios associated with use of the Equipment.

1.2 Ownership of Equipment. Each of the parties will own one repeater and related assemblies. The building will be jointly owned by the parties – 60% City and 40% Commission.

1.3 Maintenance of Equipment. Each party will be responsible for the maintenance of, updates and repairs to the Equipment each party owns.

City and Commission shall share in the costs and expenses incurred in the event there is damage to the Tower, the Property or to the Equipment or any other lessee on the Tower that may result during use, installation, maintenance, updates or repair operations unless the damage is caused by said party to which extent said damage shall be the responsibility of the party causing the damage.

1.4 Removal of Equipment. Removal and disposal of the Equipment and restoration of the property to the condition existing at the time this Agreement was entered into reasonable wear and tear excepted will be shared by the parties owning the equipment at that time.

1.5 Use of Equipment. Each party shall have use of Equipment necessary for operation of each respective radio system.

ARTICLE II **INTERFERENCE**

2.1 The Parties acknowledge that another party, AT & T, has certain rights with respect to access and use of the Tower in connection with a Ground Site Lease Agreement.

ARTICLE III

3.1 Rent. Commission shall pay to the City as rent the sum of \$200 per month due on the first day of each month beginning the first month following Commission's use of the Equipment.

3.2 Capital Cost. Commission shall also pay upon terms set by the vendor, joint capital costs associated with the initial shared Equipment allocated to and paid by Menasha Electric Utility and Menasha Water Utility proportionately on the basis of 27 radios owned by Menasha Electric Utility and 11 radios owned by Menasha Water Utility-an initial amount of \$20,000 to City representing Commission's share of capital costs incurred for the purchase and installation of the Equipment. ~~Said payment shall be due upon terms set by the vendor.~~ Said payment is estimated to be \$ _____.

ARTICLE IV **DAMAGE AND/OR DESTRUCTION**

4.1 City May Repair or Restore Upon Insured Loss. If the Tower is damaged or destroyed by fire, vandalism, or other casualty, this Agreement shall continue in full force and effect if City elects to make repairs or restores at its option the Tower within ninety (90) days of such fire or other casualty. In the event City elects to not make such repairs, City shall deliver written notice to Commission of City's election to not repair the Tower; and Commission shall have the right to terminate this Agreement effective as of the date of the damage.

4.2 Rent Abatement. If, through no fault of Commission or its agents, employees, representatives, contractors, or other persons acting or engaging by, through, or under Commission, the Tower is damaged so as to render the same substantially unusable for its intended purpose, the Rent shall abate for such period while City restores at its option the Tower.

ARTICLE V **MISCELLANEOUS**

5.1 The Parties shall cooperate in obtaining any approvals required for use of Equipment.

5.2 The following provisions from the Wisconsin Public Service Commission Order dated 1-17-2013, Docket 5-EI-149 are incorporated herein:

5.21 Future joint costs incurred, including costs related to the rental of the City Tower, shall be allocated on the basis of the number of radios then owned by the City, Menasha Electric Utility and Menasha Water Utility. Future Menasha Utility specific costs incurred shall be allocated on the basis of the number of radios then owned by Menasha Electric Utility and

Menasha Water Utility. The allocators shall be updated annually, based on the total radios at year end.

5.22 Until Menasha Electric Utility discontinues operation of the existing radio facilities and begins using the new radio facilities, Menasha Electric Utility may not be allocated any operating costs or rent associated with the new facilities.

5.23 Menasha Electric Utility shall file with and obtain Wisconsin Public Service Commission approval prior to payment of any rent or other assessment to the City associated with continued use of the Tower at the steam plant site.

5.24 The total monthly Tower rental fee may not exceed \$500.

5.3 Assignment. Commission will not assign or transfer this Agreement without the prior written consent of City.

5.4 Non-Waiver. Waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of this Agreement, regardless of City's or Commission's knowledge of any prior or proceeding breach at the time of payment or acceptance of rent.

5.5 Entire Agreement/Amendment. This Agreement contains all covenants and agreements between City and Commission relating in any manner to the rent, parties' use of the Equipment, and other matters set forth in this Agreement. No prior agreements or understandings pertaining to the matters governed by this Agreement shall be valid, or of any force or effect; and the covenants and agreements of this Agreement shall not be altered, modified, or amended, except in writing signed by City and Commission.

CITY OF MENASHA

By: _____

MENASHA WATER AND LIGHT COMMISSION

By: _____