SPECIAL MEETING

Please Note Change in Time & Room

AGENDA
BOARD OF PARK COMMISSIONERS
Kenosha Municipal Building - Room 202
Monday, October 7, 2013 - 6:45 pm

Chairman:	**Michael J. Orth**	**Vice Chairman:**	**Anthony Kennedy**
Commissioner:	**Chris Schwartz**	**Commissioner:**	**Rocco J. LaMacchia, Sr.**
Commissioner:	**Kevin E. Mathewson**		

Call to Order
Roll Call

1. Approval of Lease Agreement by the City *(of Kenosha)*, the Board of Parks Commissioners, and Kenosha County for a Proposed Public Safety Communication Tower in Nash Park. *(District 15) (Also referred to Finance)*

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS/OTHER BUSINESS AS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4052 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

1

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

October 3, 2013

To: Michael Orth, Chairman
Parks Commission

Daniel Prozanski, Chairman
Finance Committee

From: Michael M. Lemens, P.E. 10-3-13
Director of Public Works

Subject: ***Approval of Lease Agreement by the City (of Kenosha), the Board of Parks Commissioners, and Kenosha County for a Proposed Public Safety Communication Tower in Nash Park***

BACKGROUND/ANALYSIS

To accommodate the need for a new, properly operating public safety communication system to replace the existing system and tower that is need of repair and rehabilitation, Kenosha County had a new system designed that calls for construction of a replacement tower at approximately 6100 60th Street. A lease agreement to Kenosha County is required to allow for the construction of the new tower.

RECOMMENDATION

Approve the Lease Agreement.

MML

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by the **City of Kenosha**, a Wisconsin Municipal Corporation, and the **Board of Park Commissioners for the City of Kenosha**, a Wisconsin Municipal Corporation, having a mailing address of City of Kenosha Municipal Building c/o City Clerk, Room 105, 625 52nd Street, Kenosha, Wisconsin 53140 (hereinafter referred to together as "**Landlord**") and **County of Kenosha**, a Wisconsin Municipal Corporation, having a mailing address of 1010 - 56th Street, Kenosha, Wisconsin 53140 (hereinafter referred to as "**Tenant**").

RECITALS

WHEREAS, the current public safety communication relay system utilizes a tower in the vicinity of 60th Street and 54th Avenue, which is in disrepair and need of replacement ("**Existing Tower**").

WHEREAS, **Landlord** owns that certain plot, parcel or tract of land in the City and County of Kenosha as more particularly described on Exhibit 1, attached hereto and a portion of the real property commonly known as Nash Park, together with all rights and privileges arising in connection therewith ("**Property**");

WHEREAS, **Tenant** desires to use a portion of the **Property** as more particularly described on **Exhibit 2** attached hereto ("**Premises**") in connection with a public safety communication relay system to be utilized by municipalities as more particularly set forth hereinbelow;

WHEREAS, **Landlord** desires to grant **Tenant** the right to use the **Premises** in accordance with the **Agreement**;

WHEREAS, as conditions precedent to the utilization of the **Premises** in accordance with this **Agreement** the Federal Aviation Administration is required to provide a "Determination of No Hazard to Air Navigation" (hereinafter "**Determination**") and the Wisconsin Department of Natural Resources is required to provide its consent ("**Consent**");

WHEREAS, the Determination was issued by the Federal Aviation Administration on October 11, 2012; and

WHEREAS, the United States Department of the Interior has provided its consent to the modification of the boundary for the Property as evidenced by Exhibit 4 attached hereto permitting the Premises to be utilized as set forth herein as evidenced by the communication from the Wisconsin Department of Natural Resources attached hereto as Exhibit 5.

The parties agree as follows:

1. **<u>PREMISES</u>**. **Landlord** leases the **Premises** containing approximately 0.264 acres of land including the air space above such room/cabinet/ground space as described on attached Exhibit 2,

together with all necessary space and easements for access and utilities, as generally described therein and depicted in the site plan attached as Exhibit 3.

2. **PERMITTED USE**. **Tenant** shall lease the **Premises** primarily for the transmission and reception of a public safety communication relay system for the use of municipalities. Municipalities includes, but is not limited to, the County of Kenosha, City of Kenosha, Kenosha City/County Joint Services, and the Kenosha Water Utility and shall include, to the extent it exists, their law enforcement agencies, fire departments, public works departments or other similar first responder entities. **Tenant's** use may include a suitable support structure not to exceed three hundred fifty (350) feet in height, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the **Premises** (collectively, the "**Communication Facility**"). **Tenant** shall allow any municipality to attach any equipment to Communication Facility and, if necessary, utilize ground space for shelters or cabinets necessary for the operation of the public safety communication relay system.

The parties recognize and acknowledge that the **Premises** may be utilized commercially by Hiercomm, Inc., to provide broadband services in Kenosha County. The parties shall share equally any revenue paid by any commercial entity other than Hiercomm, Inc., for the use of the **Premises**. **Tenant** shall not lease or sublease any space on the ground or any structure on the **Premises** to any commercial entity other than Hiercomm, Inc., without Landlord's consent. Any commercial use of the Premises shall comply with all governmental licenses and regulations whether from the City of Kenosha, County of Kenosha, State of Wisconsin or the federal government. For purposes of this **Agreement**, a commercial use shall be any use other than that necessary for operation of a public safety communication system. Notwithstanding the commercial use of the **Premises**, the parties hereto acknowledge that the use of the **Premises** for public safety purposes is paramount and agree that the commercial use of the **Premises** must never interfere with any public safety use of the **Premises** by any municipality. Consequently, parties to this lease warrant that they will not cause interference or allow interference to be caused by commercial users of the **Premises**. Interference shall be defined as the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy. Should the **Landlord** believe that interference is occurring, notice shall be given to **Tenant** who will, upon receiving notice of such interference, cooperate with the **Landlord** to immediately resolve the issue, including, if necessary, disabling and/or disconnecting the commercial use until such time as said interference is remedied or the commercial use is ruled out as a potential source of interference.

Tenant has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to **Tenant** or **Landlord** (collectively, the "**Permitted Use**"). **Tenant** agrees that any such installation construction, maintenance, operation, repair, replacement or upgrade shall not result in a lien being placed upon the **Premises** or **Property**, and should a lien be placed upon either, **Tenant** shall take immediate steps to remove said lien. **Landlord** and **Tenant** agree that any portion of the **Communication Facility** that may be conceptually described on Exhibit 1 will not be deemed to

limit **Tenant's Permitted Use.** If Exhibit 1 includes drawings of the initial installation of the **Communication Facility**, **Landlord's** execution of this **Agreement** will signify **Landlord's** approval of Exhibit 1. For a period of ninety (90) days following the start of construction, **Landlord** grants **Tenant**, its subtenants, licensees and sublicensees, the right to use such portions of **Landlord's** contiguous or adjoining **Property** as described on Exhibit 1 as may reasonably be required during construction and installation of the **Communications Facility**. **Tenant** has the right, at its sole cost and expense, to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make **Premises** improvements, alterations, upgrades or additions appropriate for **Tenant's** use ("**Tenant Changes**"). **Tenant Changes** include the right to construct a fence around the **Premises** and undertake any other appropriate means to secure the **Premises** at **Tenant's** expense. **Tenant** agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the **Communication Facility** on the **Premises** and to obtain all necessary governmental licenses, permits and approvals for the zoning, placement, construction and operation of the **Communication Facility** and all **Tenant Changes** to the **Premises** from the City of Kenosha, Kenosha County, State of Wisconsin Department of Transportation, United States Federal Communications Commission, United States Federal Aviation Administration and any other governmental entity having appropriate jurisdiction ("Government Approvals"). **Tenant** has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the **Communication Facility** within the **Premises** at any time during the term of this **Agreement**. However, **Tenant** shall not increase the height of the **Communications Facility**. **Tenant** will be allowed to make such alterations to the **Premises** in order to accomplish **Tenant's Changes** or to insure that **Tenant's Communication Facility** complies with all applicable federal, state or local laws, rules or regulations.

3. <u>TERM</u>.

(a) The initial lease term will be ten (10) years ("**Initial Term**"), commencing on the Effective Date of this **Agreement** (the "**Term Commencement Date**"). The **Initial Term** will terminate on the tenth (10) annual anniversary of the **Term Commencement Date**.

(b) This **Agreement** will automatically renew for three (3) additional five (5) year term(s) (each term shall be defined as the "**Extension Term**"), upon the same terms and conditions unless the **Tenant** is in breach of this Agreement at the time of such renewal or notifies the **Landlord** in writing of **Tenant's** intention not to renew this **Agreement** at least sixty (60) days prior to the expiration of the existing Term.

(c) The **Initial Term** and the **Extension Term** are collectively referred to as the Term ("**Term**").

4. <u>RENT</u>.

(a) Commencing on the **Term Commencement Date** and yearly thereafter, **Tenant** shall be obligated to **Landlord** for an annual rental payment of One and No/100 Dollars ($1.00)

("**Rent**"), at the address set forth above. Payment shall be made on or before January 5th of each year in advance.

(b) All charges payable under this **Agreement** such as utilities and taxes shall be billed by **Landlord** within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by **Landlord**, and shall not be payable by **Tenant**. The provisions of this Section shall survive the termination or expiration of this Agreement.

(c) In the event that the **Premises** cease to be utilized for any public safety purpose, the **Tenant** shall, at their discretion, have the option of either paying a monthly rental to the **Landlord** equal to the fair market rental for communication tower ground leases in effect at the time in the City of Kenosha or terminating this **Agreement**. Should the **Tenant** agree to pay a monthly rental equal to the fair market rental, such calculation shall consider all relevant factors including, but not limited to, the size of the **Premises**, the location of the **Premises** and the height of the structure(s) situated on the **Premises**. Said rental shall be effective on the first full month following the discontinued use of the **Premises** for any public safety purpose and shall be increased by three percent (3%) annually on subsequent anniversaries of the **Term Commencement Date**. Should the **Tenant** choose to terminate this **Agreement**, **Tenant** shall be required to remove the **Communication Facility** from the **Premises** within six (6) months from the discontinuation of the **Premises** for any public safety use and restore the **Premises** to its natural condition.

(d) Nothing in Section (c) above shall be construed as limiting the ability of the **Landlord** and **Tenant** to come to any other arrangement by mutual written agreement as to the question of use and compensation therefore in the event that the Premises cease to be utilized for any public safety purpose.

5. **APPROVALS**. **Landlord** agrees that **Tenant's** ability to use the **Premises** is contingent upon the suitability of the **Property** for **Tenant's Permitted Use** and **Tenant's** ability to obtain and maintain all operational Government Approvals including, but not limited to, the **Landlord's** ability to obtain the **Consent**. **Landlord** authorizes **Tenant** to prepare, execute and file all required applications to obtain Government Approvals for **Tenant's Permitted Use** under this **Agreement** and agrees to reasonably assist **Tenant** with such applications and with obtaining and maintaining the Government Approvals.

6. **TERMINATION**. This **Agreement** may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 14 of this **Agreement** after the applicable cure periods;

(b) by either party upon written notice, if **Tenant** or **Landlord,** as the case may be, is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the **Communication Facility** as now or hereafter intended by **Tenant** including, but not limited to,

the **Consent**.

7. INSURANCE.

(a) **Tenant** will carry during the **Term**, at its own cost and expense, the following insurance: (i) "All Risk" Property Insurance for its property's replacement cost; (ii) Commercial General Liability (CGL) Insurance with a limit of liability of Five Million Dollars ($5,000,000.00) combined single limit for bodily injury and property damage; and (iii) Workers' Compensation Insurance at the statutory limits and Employer's liability in the amount of $100,000 per accident, $100,000 disease per employee, and a $500,000 disease policy limit.

(b) **Tenant's** CGL coverage shall contain a provision naming the City of Kenosha and Board of Park Commissioners for the City of Kenosha as "additional insureds". **Tenant** shall provide **Landlord,** upon request, with a copy of the endorsement identifying the additional insureds. The insurance policy or policies shall contain a clause that in the event any policy is canceled for any reason the City Clerk will be notified, in writing, by the insurer at least thirty (30) days before any cancellation or changes take effect. Said policies shall be issued by an insurance company or companies authorized to do business in the State of Wisconsin. **Tenant** prior to executing this **Agreement** shall furnish a Certificate of Insurance indicating compliance with the foregoing. Annual Certificates of Insurance shall be furnished to the City Clerk throughout the **Term** of this **Agreement**. Any subcontractor of **Tenant** shall also have coverage in the amounts required of **Tenant** and include like notice requirements and additional insured endorsements.

(c) If for any reason, the insurance coverage required herein lapses and **Tenant** fails to replace such insurance prior to the lapse date, **Landlord** may declare this **Agreement** terminated as of the date no valid insurance policy was in effect. The failure of **Tenant** to take out and/or maintain the required insurance shall not relieve **Tenant** from any liability under this **Agreement**. The insurance requirement shall not be construed to conflict with the obligations of **Tenant** in Section 8 - Indemnification.

8. INDEMNIFICATION.

(a) **Tenant** agrees to indemnity, defend and hold **Landlord** harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the **Communication Facility, Tenant's** breach of any provision of this **Agreement** or failure to obtain the **Consent**, except to the extent attributable to the negligent or intentional act or omission of **Landlord**, its employees, agents or independent contractors. **Tenant** does not waive any defenses or statutory limits of liability.

(b) **Landlord** agrees to indemnity, defend and hold **Tenant** harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of **Landlord** or its employees or agents, or **Landlord**'s breach of any provision of this **Agreement**, except to the extent attributable to the negligent or intentional act or omission of

Tenant, its employees, agents or independent contractors. **Landlord** does not waive any defenses or statutory limits of liability.

9. WARRANTIES.

(a) **Tenant** and **Landlord** each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this **Agreement** and bind itself hereto through the party set forth as signatory for the party below.

(b) **Landlord** represents and warrants that: (i) as long as **Tenant** is not in default then **Landlord** grants to **Tenant** sole, actual, quiet and peaceful use, enjoyment and possession of the **Premises**; and (ii) **Landlord's** execution and performance of this **Agreement** will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the **Landlord**.

10. ENVIRONMENTAL LAWS.

(a) **Landlord** and **Tenant** shall not introduce or use any Hazardous Substance on the **Property** in violation of any applicable law. **Landlord** shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance (i) caused by **Landlord** or its agents that have occurred or which may occur on the **Property** and (ii) caused by any unrelated third party, that have occurred or which may occur on the **Property**, provided, however, **Landlord** shall not be responsible for spills or other releases caused by unrelated third parties if such spill or release occurs on the **Premises** after the **Effective Date**. **Tenant** shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance (x) caused by **Tenant** or its agents, that have occurred or which may occur on the **Property** and/or **Premises** and (y) caused by any unrelated third party which may occur after the **Effective Date** on the **Premises**. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively "**Claims**") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the **Property** or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from the indemnitor's activities on the **Property**. The indemnifications in this Section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. Further, the indemnifications in this Section shall be applicable whenever contamination has migrated off the **Premises** or **Property.** This Section 10 shall survive the termination or expiration of this **Agreement**.

(b) In the event **Tenant** becomes aware of any hazardous materials on the **Property**, or any environmental or industrial hygiene condition or matter relating to the **Property** that **Tenant** or any of **Tenant's** agents did not cause by any act or omission of **Tenant** or any of **Tenant's**

agents, and further that, in **Tenant's** sole determination, renders the condition of the **Premises** or **Property** unsuitable for **Tenant's** use, or if **Tenant** believes that the leasing or continued leasing of the **Premises** would expose **Tenant** to undue risks of government action, intervention or third party liability, **Tenant** will have the right, in addition to any other rights it may have at law or in equity, to terminate the **Agreement** upon notice to **Landlord**.

11. <u>ACCESS</u>.

(a) **Tenant**, at its expense, may use any and all appropriate means of restricting access to the **Premises**, including, without limitation, the construction of a fence on the **Premises** subject to applicable permits, requirements and laws. **Tenant** shall maintain, at its expense, any fence that is constructed on the **Premises**. **Tenant** shall allow **Landlord's** representatives reasonable access to the **Premises** to ascertain compliance with City Ordinances.

(b) As partial consideration for **Rent** paid under this **Lease**, **Landlord** hereby grants **Tenant** an easement in, under and across the **Property** for ingress, egress, utilities and access to the **Premises** adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cables, and to service the **Property** and the Antenna Facilities at all times during the **Initial Term** of this **Lease** and any **Renewal Term** (collectively, the "**Easements**"). The **Easements** are intended to be coincidental to this **Agreement** and, therefore, shall terminate upon the termination of this **Agreement**.

(c) **Tenant** shall have twenty-four (24) hours a day, seven (7) days a week access to the **Property** ("Access") at all times during the Term of this Lease and **Landlord** agrees to provide **Tenant** such codes, keys and other instruments necessary for such access at no additional cost to **Tenant**. If **Landlord** fails to provide the access granted by this Section 11, such failure shall be a default under this **Lease**. In the event any public utility is unable to use the access or easement provided to **Tenant** then the **Landlord** agrees to grant additional access or an easement either to **Tenant** or to the public utility, for the benefit of **Tenant**, at no cost to **Tenant**.

12. <u>REMOVAL/RESTORATION</u>.

(a) All portions of the **Communication Facility** brought onto the **Premises** by **Tenant** will be and remain **Tenant's** personal property and, at **Tenant's** option, may be removed by **Tenant** at any time during the Term. **Landlord** covenants and agrees that no part of the **Communication Facility** constructed, erected or placed on the **Premises** by **Tenant** will become, or be considered as being affixed to or a part of, the **Premises**, it being the specific intention of the **Landlord** that all improvements of every kind and nature constructed, erected or placed by **Tenant** on the **Premises** will be and remain the property of the **Tenant** and may be removed by **Tenant** at any time during the **Term**. Within sixty (60) days of the termination of this **Agreement**, **Tenant** will remove those above ground improvements which **Landlord**, in its sole discretion, desires to have removed. Further, **Tenant** shall restore the **Premises** to its condition prior to the commencement of any improvements/changes to the **Premises**, reasonable wear and tear and loss by casualty or other causes beyond **Tenant's** control excepted. Notwithstanding the foregoing, **Tenant** will not be responsible for the replacement of any trees, shrubs or other vegetation, though

Tenant shall be required to seed or sod the **Property**.

(b) **Tenant** shall, at its expense, completely remove the **Existing Tower** within six (6) months of the commencement of operation of the **Communication Facility** upon the **Premises**.

13. MAINTENANCE/UTILITIES.

(a) **Tenant** shall, at **Tenant's** expense, keep and maintain the **Premises**, the **Communication Facility** and its own personal property kept on the **Premises** in good condition and repair, normal wear and tear and casualty excepted, but in all events **Tenant** shall maintain the **Premises**, the **Communication Facility** and its own personal property kept on the **Premises** in conformity with all applicable laws. **Tenant's** obligations shall include, but shall not be limited to, construction and maintenance of, and snow removal from, the access easement area included within the **Premises**.

(b) **Tenant** shall have the right to install utilities, at **Tenant's** expense, and to improve the present utilities on the **Premises** servicing the **Premises** (including, but not limited to, the installation of emergency power generators). **Landlord** agrees to use reasonable efforts in assisting **Tenant** to acquire necessary utility service. **Tenant** shall, wherever practicable, install separate meters for utilities used on the **Premises** by **Tenant**. **Landlord** shall diligently correct any variation, interruption or failure of utility service caused by the negligence of **Landlord**. **Landlord** acknowledges that **Tenant** provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in **Tenant's** reasonable determination, the **Landlord** agrees to allow **Tenant** the right to bring in a temporary source of power for the duration of the interruption. **Landlord** will fully cooperate with any utility company requesting an easement over, under and across the **Property** in order for the utility company to provide service to the **Tenant**. **Landlord** will not be responsible for interference with, interruption of or failure, beyond the reasonable control of **Landlord**, of such services to be furnished or supplied by **Landlord**.

14. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by **Tenant** and a breach of this **Agreement**: (i) nonpayment of **Rent** if such **Rent** remains unpaid for more than thirty (30) days after receipt of written notice from **Landlord** of such failure to pay; (ii) **Tenant's** failure to perform or abide by any other term or condition under this **Agreement** within forty-five (45) days after receipt of written notice from **Landlord** specifying the failure; and (iii) **Tenant's** failure to immediately address a complaint of interference made by **Landlord** as set forth in Section 2 hereinabove. No such failure, however, will be deemed to exist if **Tenant** has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of **Tenant**. If **Tenant** remains in default beyond any applicable cure period, **Landlord** will have the right to exercise any and all rights and remedies available to it under law and equity including, but not limited to, injunctive relief and/or damages. This shall not, however, limit **Landlord's** right to enter the **Premises** and remove equipment or other personal property in the event of

default.

(b) The following will be deemed a default by **Landlord** and a breach of this **Agreement**: (i) failure to provide access to the **Property** or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) **Landlord's** failure to perform or abide by any term, condition or breach of any warranty or covenant under this **Agreement** within forty-five (45) days after receipt of written notice from **Tenant** specifying the failure. No such failure, however, will be deemed to exist if **Landlord** has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of **Landlord**. If **Landlord** remains in default beyond any applicable cure period, **Tenant** will have the right to exercise any and all rights and remedies available to it under law and equity, including, but not limited to, injunctive relief and/or damages.

15. <u>ASSIGNMENT/SUBLEASE</u>. Given the permitted use of the **Premises** for the operation of a public safety communication relay system, **Tenant** shall not assign this **Agreement** without written consent of **Landlord**.

16. <u>NOTICES</u>.

All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant: County of Kenosha
Attn: County Clerk
1010 56th Street
Kenosha, WI 53140

With a copy to: Corporation Counsel
912 - 56th Street, LL 13
Kenosha, WI 53140

If to Landlord: Office of City Clerk
Municipal Building, Room 105
625 - 52nd Street
Kenosha, WI 53140

With a copy to: Board of Park Commissioners
City of Kenosha Municipal Building
c/o City Clerk, Room 105
625 - 52nd Street
Kenosha, WI 53140

With a copy to: Office of the City Attorney
625 - 52nd Street, Room 201
Kenosha, WI 53140

With a copy to: City of Kenosha Parks Department
Attention: Superintendent of Parks
3617- 65th Street
Kenosha, WI 53142

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

17. **CASUALTY**. **Landlord** will provide notice to **Tenant** of any casualty affecting the **Premises** within forty-eight (48) hours of **Landlord's** knowledge of any casualty. If any part of the **Communication Facility** is damaged by fire or other casualty so as to render the **Premises** unsuitable, in **Tenant's** sole determination, then **Tenant** may terminate this **Agreement** by providing written notice to the **Landlord**, which termination will be effective as of the date of such damage or destruction. Upon such termination, **Tenant** will be entitled to collect all insurance proceeds payable to **Tenant** on account thereof. If notice of termination is given, or if **Landlord** or **Tenant** undertake to rebuild the **Communications Facility**, **Landlord** agrees to use its reasonable efforts to permit **Tenant** to place temporary transmission and reception facilities on the **Property** at no additional **Rent** until such time as **Tenant** is able to activate a replacement transmission facility at another location or the reconstruction of the **Communication Facility** is completed.

18. **TAXES AND FEES**. **Tenant** shall pay any personal property taxes, real property taxes, utility taxes, or any other taxes or fees that may be applicable or attributable to **Tenant's** use of or charged to the **Premises**.

19. **MISCELLANEOUS**.

(a) **Amendment/Waiver**. This **Agreement** cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the **Landlord** and an authorized agent of the **Tenant**. No provision may be waived except in a writing signed by both parties. No extension of time, forbearance, neglect or waiver by one party with respect to any one or more of the covenants, terms and conditions of this **Agreement** shall be construed as a waiver of any of the other covenants, terms or conditions of this **Agreement**, or as an estoppel against the waiving party, nor shall any extension of time, forbearance or waiver by one party in any one or more instance be construed to be a waiver or estoppel with respect to any other instance or particular covered by this **Agreement**.

(b) **Entire Agreement**. This **Agreement** and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this **Agreement**.

(c) **Governing Law**. This **Agreement** will be governed by the laws of the State of Wisconsin.

(d) **Interpretation**. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) exhibits are an integral part of the **Agreement** and are incorporated by reference into this **Agreement**; (iv) use of the terms "termination" or "expiration" are interchangeable; (v) reference to a default will take into consideration any applicable notice, grace and cure periods; and (vi) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this **Agreement**, the ambiguity shall not be resolved on the basis of who drafted the **Agreement**.

(e) **Severability**. If any term or condition of this **Agreement** is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this **Agreement** then the **Agreement** may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(f) **Counterparts**. This **Agreement** may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties it being understood that all parties need not sign the same counterpart.

20. REPRESENTATION OF AUTHORITY TO ENTER INTO AGREEMENT. Each of the undersigned hereby represents and warrants that: (a) such party has all requisite power and authority to execute this **Agreement**; (b) the execution and delivery of this **Agreement** by the undersigned, and the performance of its terms thereby have been duly and validly authorized and approved by all requisite action required by law; and (c) this **Agreement** constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the **Agreement**.

The remainder of this page was left purposely blank
Signatures appear on the following pages

IN WITNESS WHEREOF, the parties hereto have hereunto executed this **Agreement** on the dates below given.

LANDLORD:

CITY OF KENOSHA,
a Wisconsin municipal corporation

By: _____
KEITH G. BOSMAN, Mayor

Date: _____

By: _____
DEBRA L. SALAS, City Clerk/Treasurer

Date: _____

STATE OF WISCONSIN)
:SS
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2013, **KEITH G. BOSMAN**, Mayor, and **DEBRA L. SALAS**, City Clerk/Treasurer, of the City of Kenosha, Wisconsin, a Wisconsin Municipal Corporation, to me known to be such Mayor and City Clerk/Treasurer, and acknowledged to me that they executed the foregoing instrument as such officers as the **Agreement** of said City, by its authority.

_____
Notary Public, Kenosha County, WI.
My Commission expires/is: _____

THE BOARD OF PARK COMMISSIONERS FOR THE CITY OF KENOSHA,
a Wisconsin Municipal Commission

BY: _____
MICHAEL J. ORTH, Chairperson

Date: _____

STATE OF WISCONSIN)
:SS
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2013, **MICHAEL J. ORTH**, Chairperson of the **CITY OF KENOSHA, WISCONSIN Board of Park Commissioners,** a Wisconsin Municipal Commission, to me known to be such Chairperson and acknowledged to me that he executed the foregoing instrument as such officer as the **Agreement** of said City, by its authority.

_____
Notary Public, Kenosha County, WI.
My Commission expires/is.: _____

TENANT: COUNTY OF KENOSHA,
a Wisconsin Municipal Corporation

BY: _____
JIM KREUSER, County Executive

DATE: _____

STATE OF WISCONSIN)
:SS
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2013 **JIM KREUSER**, County Executive, of the **COUNTY OF KENOSHA, WISCONSIN,** a Wisconsin Municipal Corporation, to me known to be such County Executive, and acknowledged to me that he executed the foregoing instrument as such officer as the **Agreement** of said County, by its authority.

_____
Notary Public, Kenosha County, WI.
My Commission expires/is.: _____

EXHIBIT 1

LEGAL DESCRIPTION OF ENTIRE PROPERTY

Part of the Southeast 1/4 of Section 34, Township 2 North, Range 22 East of the Fourth Principal Meridian, and being more particularly described as follows:
Commencing at the Southeast corner of said 1/4 Section; thence South 89°40'21" West along the South line of said 1/4 Section 1597.11 feet; thence North 1°50'15" West parallel to the East line of said 1/4 Section 50.02 feet to a point on the North right-of-way line of 60th Street said point being the point of beginning; thence continue North 1°50'15" West parallel to said East line 324.99 feet; thence South 89°40'21" West parallel to the South line of said 1/4 Section 383.35 feet; thence South 1°50'15" East parallel to the East line of said 1/4 Section 324.99 feet to the North right-of-way line of 60th Street; thence North 89°40'21" East parallel to the South line of said 1/4 Section and along the North right-of-way line of 60th Street 383.35 feet to the point of beginning. Said land being in the City of Kenosha, County of Kenosha, and State of Wisconsin.

EXHIBIT 2

CITY OF KENOSHA

PLAT

PROPOSED EASEMENT FOR THE KENOSHA COUNTY PUBLIC SAFETY TOWER AT NASH PARK

Part of the Northeast Quarter of Section 3, Town 1 North, Range 22 East, and part of the Southeast Quarter of Section 34, Town 2 North, Range 22 East of the Fourth Principal Meridian, lying and being in Somers Township, Kenosha County, Wisconsin and more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter of said Section 34; thence South 89°40'21" West along the south line of said Quarter Section, 1,597.11 feet to a point which is the southerly extension of the east line of Parcel Number 08-222-34-451-022, City of Kenosha, Nash Park; thence North 1°50'15" West along said east line extension, 50.02 feet to the north line of 60th Street and the southeast corner of said Parcel; thence South 89°40'21" West along said north line, 40.39 feet and to the point of beginning; thence South 89°40'21" West along said north line, 57.00 feet; thence North 0°19'39" West 74.34 feet; thence South 89°40'21" West 64.00 feet; thence North 0°19'39" West 60.00 feet; thence North 89°40'21" East 121.00 feet; thence South 0°19'39" East 134.34 feet to the point of beginning; containing 0.264 acres of land, more or less.

EXHIBIT 3

PLAT OF SURVEY

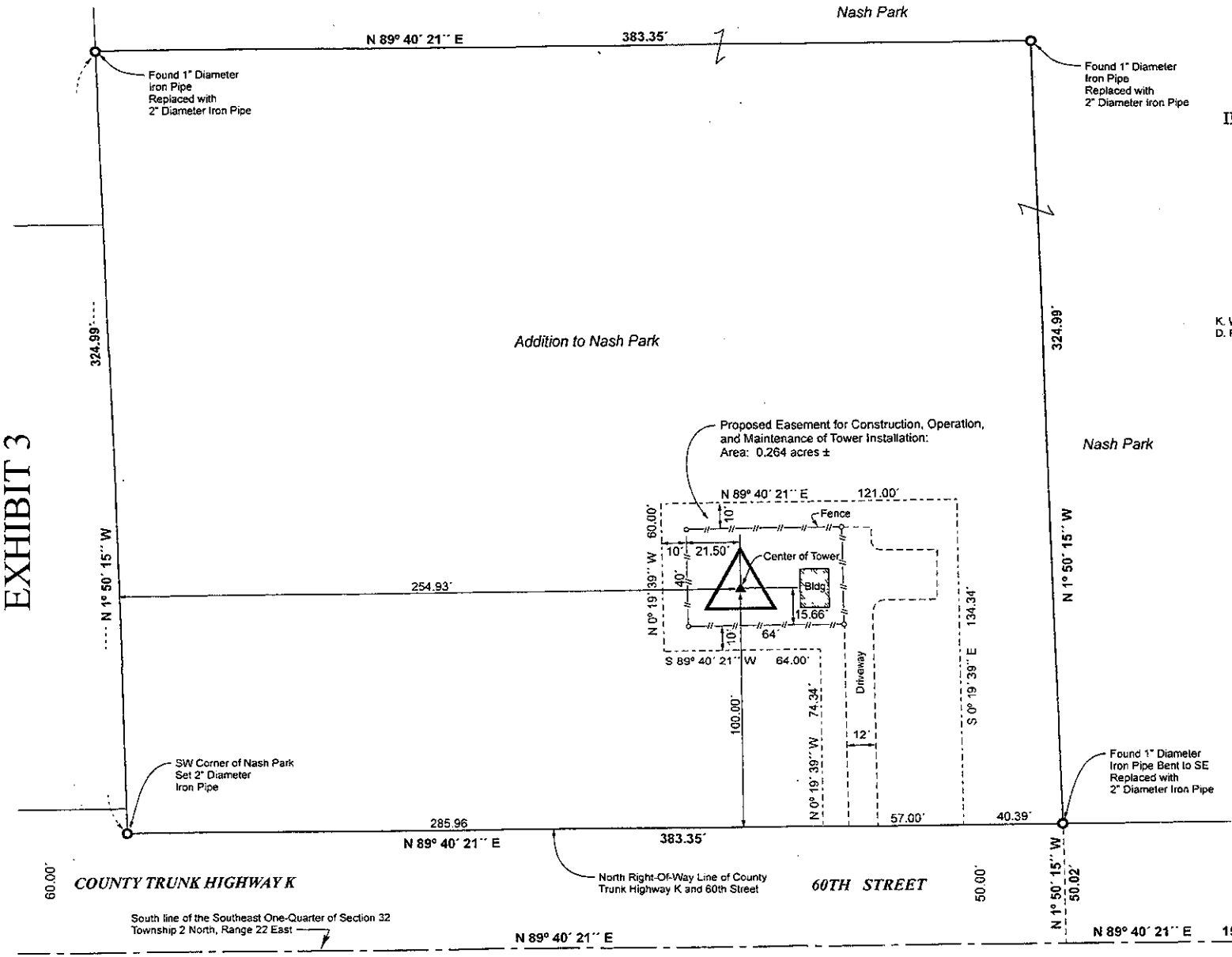
OF A PART OF
NASH PARK

IN THE SE ONE-QUARTER OF SECTION 34,
TOWNSHIP 2 NORTH, RANGE 22 EAST
CITY OF KENOSHA, KENOSHA COUNTY,
WISCONSIN

SHOWING LOCATION OF PROPOSED
RADIO COMMUNICATIONS TOWER
AND APPURTENANT IMPROVEMENTS

K. W. BAUER, COUNTY SURVEYOR, S-157
D. P. SIMON, S-2779, DEPUTY COUNTY SURVEYOR

NOVEMBER 2012



SCALE IN FEET
0 20 40

Southeastern Wisconsin Regional Planning Commission
W239 N1812 Rockwood Drive
P.O. Box 1607
Waukesha, Wisconsin 53187-1607
262-547-6721

Coordinates are on the Wisconsin State Plane Coordinate System, South Zone, North American Datum of 1927; all bearings are referred to Grid North of that System; all distances are ground level distances

EXHIBIT 4

United States Department of the Interior

National Park Service

Midwest Region
601 Riverfront Drive
Omaha Nebraska 68102-4226

55-01678(MWR-NRSS-P/G)
55-01708

11 SEP 13

Ms. Lavane Hessler
Stewardship & LWCF Grant Manager
Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Ms. Hessler:

This is to inform you of the approval for amendment number 1 to Land and Water Conservation Fund (LWCF) project 55-01678, Kenosha West Side Park Acquisition. This amendment converts 0.264-acre of land at Nash Park and adds 2.21 acres to Washington Park.

Enclosed is your copy of the amendment. Because the action of this conversion also applies to LWCF grant 55-01708, we recommend you place a copy of this letter and the executed amendment in the project file. Any questions you have related to this conversion may be directed to me at 402-661-1548.

Sincerely,

Carol A. Edmondson

Carol A. Edmondson
Outdoor Recreation Planner

Enclosure

TAKE PRIDE IN AMERICA

EXHIBIT 4

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

STATE Wisconsin

Project Amendment No. 1

AMENDMENT TO PROJECT AGREEMENT

(OMB No. 1024-0033, October 31, 2013)

THIS AMENDMENT To Project Agreement No. 55-01678 **is hereby made and agreed upon by the United States of America, acting through the Director of the National Park Service and by the State of** Wisconsin **pursuant to the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).**

The State and the United States, in mutual consideration of the promises made herein and in the agreement of which this is an amendment, do promise as follows:

That the above mentioned agreement is amended by adding the following:

The 6(f)(3) boundary is amended by deleting 0.264 acres from the original park boundary of Nash Park and adding 2.21 acres to the 29 acre Washington Park boundary.

In all other respects the agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness thereof the parties hereto have executed this amendment as of the date entered below.

THE UNITED STATES OF AMERICA

By _____
(Signature)

CHIEF, RECREATION GRANTS DIVISION
(Title)

National Park Service
United States Department of the Interior

Date 09/11/2013

STATE

Wisconsin
(State)

By _____
(Signature)

Lavane J. Hessler
(Name)

ASLO
(Title)

Estimated Burden Statement: The public reporting burden for this collection of information is estimated to average 3 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form should be sent to the National Park Service, State and Local Assistance Programs Division, 1849 C Street NW, Washington, DC 20240.

Paperwork Reduction Act Statement: This form is necessary to provide data input into an NPS project database which provides timely data on projects funded over the life of the program. Such data is used to monitor project progress and to analyze program trends. A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Any comments on the burden estimate or other aspects of this collection of information may be addressed to the National Park Service, State and Local Assistance Programs Division, 1849 C Street NW, Washington, DC 20240.

NPS 10-902A (July 1981)

Zimbra **brichardson@kenosha.org**

FW: Approval of Nash Park Conversion

From : Jim M Ritchie - DNR <Jim.Ritchie@wisconsin.gov> Fri, Sep 13, 2013 10:57 AM
Subject : FW: Approval of Nash Park Conversion 9 attachments
To : brichardson@kenosha.org

Mr. Richardson,
Attached is the approval letter and grant amendment from the National Park Service. The parkland conversion is approved and the tower construction can proceed. Please let know if you have any questions.

Jim Ritchie
Southeast & South Central Regions Government Outreach Team Supervisor
Bureau of Community Financial Assistance
Wisconsin Department of Natural Resources

(*) phone: (414) 263-8610
(*) e-mail: Jim.Ritchie@Wisconsin.gov<mailto:Jim.Ritchie@Wisconsin.gov>
Learn more about DNR grants and loans by going to http://dnr.wi.gov<http://dnr.wi.gov/> and entering the keywords "grants and loans"
You can also follow the Wisconsin DNR online: [cid:image001.png@01CD0E7F.11E61820] <http://facebook.com/widnr/> [cid:image002.png@01CD0E7F.11E61820] <http://twitter.com/> [cid:image003.png@01CD0E7F.11E61820] <http://www.youtube.com/user/WIDNRTV> [cid:image004.png@01CD0E7F.11E61820] <http://www.flickr.com/photos/widnr/>
"Take a moment to enjoy Wisconsin's outdoors."

We are committed to service excellence.
Visit our survey at http://dnr.wi.gov/u/?q=85 to evaluate how I did.

From: Ritchie, Jim M - DNR
Sent: Wednesday, September 11, 2013 3:47 PM
To: Frank Martinelli; Brian Wilke
Subject: Approval of Nash Park Conversion

Frank and Brian,
Attached is the approval letter from the National Park Service for the conversion of 0.264 acres of Nash Park for the construction of the public safety tower. This letter is the final approval for the conversion request. Thank you for your efforts in going through the conversion process. Please let me know if you have any questions.
Jim

Jim Ritchie
Southeast & South Central Regions Government Outreach Team Supervisor
Bureau of Community Financial Assistance
Wisconsin Department of Natural Resources

(*) phone: (414) 263-8610
(*) e-mail: Jim.Ritchie@Wisconsin.gov<mailto:Jim.Ritchie@Wisconsin.gov>
Learn more about DNR grants and loans by going to http://dnr.wi.gov<http://dnr.wi.gov/> and entering the keywords "grants and loans"
You can also follow the Wisconsin DNR online: [cid:image001.png@01CD0E7F.11E61820] <http://facebook.com/widnr/> [cid:image002.png@01CD0E7F.11E61820] <http://twitter.com/> [cid:image003.png@01CD0E7F.11E61820] <http://www.youtube.com/user/WIDNRTV> [cid:image004.png@01CD0E7F.11E61820] <http://www.flickr.com/photos/widnr/>