

MEETING AGENDA
FINANCE & PERSONNEL COMMITTEE OF THE
PLYMOUTH COMMON COUNCIL
COUNCIL CHAMBERS
128 SMITH STREET
CITY OF PLYMOUTH, WISCONSIN
TUESDAY JUNE 13, 2023 @ 6:40 P.M.

Members Present:

____ Mayor Pohlman
____ John Nelson
____ Jeff Tauscheck
____ Greg Hildebrand
____ Mike Penkwitz

Staff:

____ Tim Blakeslee
____ Anna Voigt

Other:

1. Call to order and roll call.
2. Approval of meeting minutes for April 25, 2023 meeting
3. Discussion and possible recommendation for Reciprocal Dark Fiber IRU Agreement with TDS Metrocom LLC.
4. Entertain a motion to go into closed session for the follow:
Entertain a motion to go into closed session for the following:
pursuant to Wis. Stat. 19-85 (1)(c) considering employments, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility regarding the Finance Director
5. Entertain a motion to go into open session
6. Discussion and possible action on closed session item
7. Adjournment

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the City of Plymouth ADA Coordinator Leah Federwisch, located in the Plymouth Utilities office at 900 County Road PP, Plymouth, WI or call 920-893-3853.

UNOFFICIAL MINUTES

FINANCE & PERSONNEL COMMITTEE OF THE PLYMOUTH COMMON COUNCIL

TUESDAY APRIL 25, 2023 @ 6:30 P.M.

1. **Call to order and roll call:** Mayor Pohlman called the meeting to order at 6:30 PM. On call of the roll, the following members were present: Mayor Pohlman, John Nelson, Jeff Tauscheck, Greg Hildebrand, and Mike Penkwitz. Also present were: Alder. Angie Matzdorf, City Administrator/Utilities Manager Tim Blakeslee and Clerk/Deputy Treasurer Anna Voigt.
2. **Approval of meeting minutes for March 14, 2023 meeting:** Motion was made by Hildebrand/Penkowitz to approve minutes from March 14, 2023. A unanimous aye vote was cast. Motion carried.
3. **Appoint a Chairperson:** Mayor Pohlman opened the floor for nominations. Hildebrand nominated John Nelson for Chairperson. Penkwitz/Tauscheck made a motion to elect Nelson as Chairperson and to close nominations. A unanimous aye vote was cast. Motion carried.
4. **Discussion and Recommendation regarding revisions to the transient merchant requirements related to farmers market events:** Blakeslee explained that a transient merchant is defined in City Code as a person who sells products for immediate delivery to individual residences or to persons on the street, including the sale of food from a mobile food vehicle. A transient merchant must obtain a permit with a cost of \$75 to sell within the city. The permit is valid on the date approved through December 31st and must be renewed on a yearly basis. Currently the Plymouth Farmers Market is operated by the Sheboygan Interfaith Organization in a private lot near Dairy Queen on Thursdays from noon-5 PM. From mid-June through mid-October. The Plymouth Farmers Market typically consists of agricultural products, which are exempt from the Transient Merchant permit. The Sheboygan Interfaith Organization would like to extend an invitation to craft vendors and food vendors to enhance the Plymouth Farmers Market. A request was made that the City of Plymouth consider amending the code to allow for a \$5 fee per event per vendor, which would mimic what is currently approved in the City of Sheboygan. Hildebrand stated he thought the amount should stay \$75 for people who are going door to door selling things. Blakeslee stated the organization has tried a few different locations and they haven't worked. Alder. Matzdorf asked to speak, she stated this is kind of the last chance the organization is trying to get it to work in the city. Tauscheck asked a few questions. One being if the \$5 is even worth it and how much of the time of City Staff it would take? Blakeslee stated that the \$5 is something so not just anyone will apply to sell crafts on the corner and say it's a farmers' market. The idea is that the organization will fill out the form and collect the money to submit in one lump once a year. Nelson stated that it sounds like the consensus is everyone would like the farmers market to succeed and to get more information and bring it back to council.
5. **Adjournment:** Pohlman/Tauscheck made a motion to adjourn the meeting. A unanimous aye vote was cast. Motion carried.

City of Plymouth
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DATE: June 9, 2023
TO: Finance and Personnel Committee
FROM: Tim Blakeslee, City Administrator/Utilities Manager
RE: Recommendation of Reciprocal Dark Fiber IRU Agreement with TDS Metrocom LLC

Background:

TDS Fiber is currently completing a fiber optic installation in Plymouth. The project is expected to take approximately three years to complete. In March, the City approved a Pole Contact Agreement which stipulates requirements and cost to attach to Plymouth Utility infrastructure for overhead fiber lines.

Over the past several months Staff alongside our attorney with Boardman Clark have been negotiating with TDS on terms for a Reciprocal Dark Fiber IRU (indefeasible right to use) Agreement. The primary focus of the agreement is a fiber swap between the City and TDS. TDS will install new fiber for the City to use to the pool and golf course and in exchange TDS will be granted usage of an unused portion of the City's already buried fiber line to Johnsonville. With a fiber connection to the pool and golf course, the City will be eventually able to accept credit cards at these locations, allow the pool and golf course to be on the city phone system, and allow the pool and golf course to have city network access. TDS will construct the fiber to the pool and golf course no later than June 30, 2024.

The agreement includes additional provisions for testing, routine maintenance, and emergency repairs. The initial agreement term is 22 years. The proposed agreement is attached for review and approval. Per the agreement, the City must use the fibers provided for internal City communications and not for the provision of Internet access to the public or resale in any manner.

Recommendation: Recommend Common Council approve the Reciprocal Dark Fiber IRU Agreement with TDS Metrocom LLC

Attachments:

1. Reciprocal Dark Fiber IRU Agreement

RECIPROCAL DARK FIBER IRU AGREEMENT

THIS RECIPROCAL DARK FIBER IRU AGREEMENT (“**Agreement**”) is effective as of the date of the last signature below (“**Effective Date**”) and is made by and between TDS Metrocom, LLC, a Delaware limited liability company, having an office located at 525 Junction Road, Suite 6000, Madison, Wisconsin 53717 (“**TDS**”) and the City of Plymouth, Wisconsin, having a place of business at 900 County Hwy PP, Plymouth, WI 53073 (“**City**”), each referred to as a “**Party**” or jointly referred to as the “**Parties**.”

BACKGROUND

- A. TDS plans to construct, own, operate, and maintain an optical fiber system within the municipal boundaries of the City of Plymouth, Wisconsin. (“**TDS Fiber System**”).
- B. City owns an optical fiber system in the City of Plymouth, Wisconsin. (“**City Fiber System**”).
- C. The Parties desire to provide an indefeasible right to use (“**IRU**”) on each other’s system as set forth in Exhibit A.
- D. City shall use fibers provided by the TDS Fiber System solely for internal City communications and not for the provision of Internet access to the public or for resale in any manner.
- E. City desires that TDS perform emergency repairs to the City Fiber System segments in which TDS holds an IRU.

ARTICLE 1: DEFINITIONS

The following terms are used in this Agreement:

- 1.1 “**Acceptance**” means a Grantee’s issuance of an Acceptance Notice or deemed acceptance of a Segment and/or entire route given by Grantee pursuant to Article 5 of this Agreement after the applicable IRU Fibers have been tested and found acceptable.
- 1.2 “**Acceptance Notice**” means the notice of acceptance or deemed acceptance of a Segment and/or entire route given to Grantor by Grantee pursuant to this Agreement.
- 1.3 “**Dark Fiber**” means Fiber between two specified locations that has no optronics or electronics attached to it.
- 1.4 “**Fiber**” means one or more glass strands that are protected by a color-coded buffer tube and that are used to transmit a communication signal along the glass strand in the form of pulses of light.

- 1.5 **“Fiber Optic Cable”** or **“Cable”** means a collection of Fibers contained in color-coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler.
- 1.6 **“Fiber System”** means the City Fiber System and/or the TDS Fiber System, as applicable.
- 1.7 **“Grantee”** when used with respect to a Party applies where that Party is the recipient of an IRU from the other Party.
- 1.8 **“Grantor”** when used with respect to a Party applies where that Party is the grantor of an IRU to the other Party.
- 1.9 **“Indefeasible Right of Use”** or **“IRU”** is an exclusive and irrevocable right, for the Term of this Agreement as set out in Article 3, for the City to use the City IRU Fibers and for TDS to use the TDS IRU Fibers, provided, however, that granting of such IRU does not convey legal title to the Fibers.
- 1.10 **“IRU Fibers”** means Dark Fibers of one Party’s Fiber System that are subject to an IRU granted to the other Party pursuant to this Agreement.
- 1.10.1 **“City IRU Fibers”** means Dark Fiber of the TDS Fiber System in which an IRU has been granted to City by TDS pursuant to this Agreement.
- 1.10.2 **“TDS IRU Fibers”** means Dark Fiber of the City Fiber System in which an IRU has been granted by City to TDS pursuant to this Agreement.
- 1.11 **“Proportionate Share”** means with respect to:
- 1.11.1 **City IRU Fibers:** the percentage determined for each affected Segment by dividing the number of City IRU Fibers in the Segment by the total number of Fibers in the Segment.
- 1.11.2 **TDS IRU Fibers:**
- 1.11.2.1 **TDS performs Emergency Maintenance or Relocation.** The percentage determined for each affected Segment by dividing the number of Fibers in the Segment less the number of TDS IRU Fibers by the total number of Fibers in the Segment.
- 1.11.2.2 **City performs Emergency Maintenance or Relocation.** The percentage determined for each affected Segment by dividing the number of TDS IRU Fibers in the Segment by the total number of Fibers in the Segment.
- 1.12 **“Rejection Notice”** means the notice of rejection of a Segment by Grantee pursuant to this Agreement.

- 1.13 “**Segment**” is a designated portion of a Cable route. With respect to IRU Fibers, the Segments containing such IRU Fibers shall be as specified in **Exhibit A** and **Attachment A** of this Agreement.

ARTICLE 2: GRANT OF IRU

- 2.1 Subject to the terms and conditions of this Agreement, Grantor grants to Grantee the Indefeasible Right of Use with respect to the IRU Fibers as specifically described in **Exhibit A** and **Attachment A**. The IRU includes a non-exclusive right of Grantee to use tangible and intangible property owned by Grantor to the extent necessary to use the IRU Fibers, including but not limited to cable sheathing, troughing, pedestals, slack containers, and related equipment necessary for the operation and use of the IRU Fibers as contemplated herein, but excluding any electronic or optronic equipment, which shall be provided by Grantee at its sole cost and expense. The purpose of the IRU Fibers is to enable Grantee to connect the Grantee sites shown on **Attachment A** via the IRU Fibers. City shall be entitled to use the City IRU Fibers solely to: (i) connect City buildings and facilities for internal communications; (ii) connect to City owned and operated Wi-Fi hotspots at the City’s pool and Golf Course, provided, however, that the City IRU Fibers shall not be used to compete with any TDS-provided services.
- 2.2 This Agreement does not obligate either Party when acting as Grantor to supply to Grantee any optical or electrical equipment or other facilities, including without limitation, local distribution facilities, collocation space, regeneration facilities, generators, batteries, air conditioners, fire protection equipment, monitoring equipment, and testing equipment, all of which are the sole responsibility of Grantee.
- 2.3 Grant of IRUs hereunder shall not confer to Grantee any rights other than an exclusive right to use the IRU Fibers and ownership and all other rights in the IRU Fibers shall remain fully vested in Grantor.

ARTICLE 3: TERM AND TERMINATION

- 3.1 The “**Initial IRU Term**” shall commence on the date all Fibers listed with respect to a Grantee on **Exhibit A** have been accepted (*i.e.*, when all Fibers involved in a swap have been accepted by the respective Grantee) and shall terminate on December 31, 2045. The IRU term for all IRU Fibers listed in **Exhibit A** shall automatically renew for four (4) consecutive terms of five (5) years each (each a “**Renewal IRU Term**”) (the Initial IRU Term and any Renewal IRU Term shall be the “**IRU Term**”), unless a Party gives notice to the other Party of its intention not to renew one year before the end of the Initial IRU Term or any Renewal Term, in which case the IRU Term with respect to all IRU Fibers listed in **Exhibit A** shall terminate at the end of the term in which notice was given. Should a Grantor replace any IRU Fibers at any time during the IRU Term, this Agreement will continue with respect to the replaced IRU Fibers on the same terms and conditions set forth herein.
- 3.2 The term of this Agreement shall commence on the Effective Date and terminate at the end of the last IRU Term to expire, unless terminated earlier as provided by the terms of this Agreement.

- 3.3 Termination of this Agreement shall not affect the rights or obligations of any Party with respect to any payments of expenses incurred prior to the date of termination or pursuant to Article 11 (Liability) or Article 13 (Authorizations and Required Rights-of-Way).

ARTICLE 4: CONSIDERATION AND PAYMENT

- 4.1 The exchange of IRUs as well as the mutual agreement to the terms and conditions of this Agreement shall constitute full and adequate consideration and no additional consideration shall be required to be paid by either Party.
- 4.2 Any amounts due hereunder shall be paid within thirty (30) days after the receipt date of the issued invoice.

ARTICLE 5: INSTALLATION, ACCEPTANCE, AND DOCUMENTATION

- 5.1 TDS shall perform Acceptance tests with respect to both the TDS IRU Fibers in the City-owned Segments and the City IRU Fibers in the TDS-owned Segments. All such testing shall be in accordance with **Exhibit B**. TDS shall provide City with reasonable advance notice and an opportunity to witness the performance of any Acceptance tests. City may, subject to any applicable restrictions set out in the Rights-of-Way (as defined in Article 13), conduct its own inspections or tests, at City's expense and in accordance with **Exhibit B**, to determine acceptability of the tested Fibers. TDS will cooperate with City to provide additional Documentation (as defined below) upon request that would reasonably allow City to evaluate the acceptability of the tested Fibers.
- 5.2 Subject to contractor availability, TDS shall perform Acceptance tests on the TDS IRU Fibers within thirty (30) days of the Effective Date. At this end of this period, TDS will provide City with the test results and either an "Acceptance Notice" or a "Rejection Notice" substantially in the form attached as **Exhibit C** and, in the case of a Rejection, an explanation of how the tested Fibers do not meet the specifications set out in **Exhibit B** and TDS shall provide additional Documentation upon request that would reasonably allow City to evaluate the basis for rejection.
- 5.3 TDS shall construct the City IRU Fibers and expects to perform the Acceptance tests on those Fibers no later than June 30, 2024. The Parties acknowledge that the actual completion date is subject to a variety of factors outside of the control of either Party, thus, Acceptance tests may be delayed beyond June 30, 2024. TDS will communicate and provide updates as needed to City during the first two calendar quarters of 2024, and beyond if necessary, regarding the status and timing of construction and the anticipated Acceptance testing date. If TDS fails to provide the Acceptance test results for the City IRU Fibers to City by October 1, 2024, City will have the right to collect from Licensee liquidated damages of \$50.00 per day for each day between October 1, 2024 and the date such Acceptance test results are provided to City.
- 5.4 TDS shall provide the Acceptance test results to City within fourteen (14) days after performing such tests. Within fourteen (14) days after receiving the Acceptance test results from TDS, City shall provide TDS with either an Acceptance Notice or a Rejection Notice in substantially in the form attached as **Exhibit C** and, in the case of a Rejection, an

explanation of how the tested Fibers do not meet the specifications set out in **Exhibit B** and TDS shall provide additional Documentation upon request that would reasonably allow City to evaluate the basis for rejection.

- 5.5 Issuance of an Acceptance Notice or failure to issue a Rejection Notice during the time periods indicated in Sections 5.2 and 5.4 above shall constitute Acceptance of the tested Fibers by Grantee. Acceptance shall not invalidate the warranties described in this Agreement.
- 5.6 Should Grantee reject the tested Fibers by providing a Rejection Notice within the applicable 14-day period (“**Rejection**”), Grantor shall use commercially reasonable efforts, including having the Fibers retested, to substantially cure the material defective conditions identified in the Rejection Notice within sixty (60) days and to ensure the Fibers conform to the specifications in **Exhibit B**.
- 5.6.1 If City does not bring the tested TDS IRU Fibers into conformity with the specifications in **Exhibit B** within the 60-day time period set forth above, TDS shall have as its sole and exclusive remedy the right to terminate this Agreement, without cost or penalty.
- 5.6.2 If TDS does not bring the tested City IRU Fibers into conformity with the specifications in **Exhibit B** within the 60-day time period set forth above, TDS shall use commercially reasonable and diligent efforts to remedy any materially defective condition so that the City IRU Fibers will pass the Acceptance test. If TDS is ultimately unable to provide City IRU Fibers that pass the Acceptance test, City shall have the right to recover a damage remedy equal to the fair market value to a third party of the IRU conferred to TDS hereunder.
- 5.7 Any disputes as to Acceptance or Rejection of any Acceptance tests shall be resolved in accordance with Article 22.
- 5.8 Within ninety (90) days after Acceptance of any IRU Fibers (or earlier, if requested pursuant to Section 5.1 and such documentation is available), Grantor shall provide to Grantee general, non-proprietary documentation regarding the Cable, which shall consist of the following: (i) a route diagram that illustrates the location of the end, mid span splice, and mid span repeater; (ii) a summary of distances between such locations; (iii) the type of Cable construction between such locations; and (iv) any geographical information deemed necessary to further clarify the route (“**Documentation**”).

ARTICLE 6: RESERVED

ARTICLE 7: MAINTENANCE AND REPAIR

- 7.1 Each Party shall, at its sole cost and expense, schedule and perform all “**Routine Maintenance**” (i.e., periodic maintenance and repair checks and services, including those set forth in Sections 3.0 and 4.0 of **Exhibit D**); “one-call” responses; and conduit locate

services with respect to the Fibers in which it has granted an IRU to the other party. Each Party shall be responsible for performing such maintenance in a good and workmanlike manner.

- 7.2 TDS shall be responsible for performing Emergency Maintenance as defined in Section 7.3 on all Segments containing IRU Fibers when the functionality of such IRU Fibers is impaired.
- 7.3 In accordance with the notice and other requirements set forth in **Exhibit D**, TDS shall use commercially reasonable efforts to respond to any unplanned failure, sustained interruption, or impairment in the operation of the IRU Fibers (“**Emergency Maintenance**”) within four (4) hours after receiving a report (see Sections 1.0 and 2.0 of **Exhibit D**) of any such failure, interruption, or impairment. TDS shall use commercially reasonable efforts to perform maintenance and repair to correct any failure, interruption, or impairment in the operation of the affected Fibers within eight (8) hours in accordance with the procedures set forth in **Exhibit D**. City authorizes TDS to perform Emergency Maintenance on all fibers in a Segment in which TDS IRU Fibers are located. In the event Emergency Maintenance requires replacement of a section of the Fiber System, TDS shall so advise the City and TDS shall have no obligation to perform such replacement absent mutual agreement of the Parties.
- 7.4 City will reimburse TDS for City’s Proportionate Share of all reasonable costs and expenses associated with performance of Emergency Maintenance with respect to the Segments containing the TDS IRU Fibers (except as described in Section 7.5 below). City will reimburse TDS for one hundred percent of all reasonable costs and expenses associated with repair of damage to the City IRU Fibers caused by neglect or willful misconduct of City, its employees, agents, or contractors.
- 7.5 TDS shall repair, at its sole expense and without reimbursement from City, any damage to the TDS IRU Fibers caused by neglect or willful misconduct of TDS, its affiliates, employees, contractors, or agents.
- 7.6 Each Party shall provide reasonable advance notice to the other of maintenance or repairs that may affect any Segment containing the IRU Fibers. The Party receiving such notice shall have the right, subject to the protocols of the Rights-of-Way, to have a representative present any time maintenance or repairs are performed that may affect service to the IRU Fibers.

ARTICLE 8: SPLICING

- 8.1 At no cost to City, TDS shall perform all splicing of initial connections to the City IRU Fibers and the splicing of the end points of the TDS IRU Fibers.
- 8.2 Any additional splice points along the City IRU Fibers or the TDS IRU Fibers shall be as mutually agreed upon in writing by the Parties, such agreement not to be unreasonably delayed, conditioned, or withheld. All such additional splicing shall be performed by TDS and at the cost and expense of the Party requesting the additional splice point. TDS shall

invoice City for all reasonable splicing costs TDS incurs in providing an additional splice point at City's request. Such invoice shall be paid within thirty (30) days of its receipt.

- 8.3 Splicing that is performed in connection with Emergency Maintenance shall be governed by Article 7 and **Exhibit B**.
- 8.4 All splicing will be performed by the fusion splicing method or by any other method that is mutually agreeable to the Parties.

ARTICLE 9: WARRANTIES

- 9.1 TDS represents and warrants that all equipment and materials to be used in the construction of the City IRU Fibers will be new, of good quality, properly constructed and/or installed, free of defects, and in conformity with the requirements of this Agreement. Such warranty shall be effective, with respect to each specific Segment, for the same period of warranty provided to TDS by its contractors (normally a one (1) year period from date of acceptance by TDS). All work not conforming to such standards may be considered defective by City, and TDS shall use reasonable efforts to promptly repair or replace all such defective work, provided that TDS shall repair or replace such defective work within thirty (30) days following its confirmation of the defect, unless reasonable circumstances dictate a shorter or longer period, in which event the Parties shall in good faith mutually agree upon such period. All defective equipment or items replaced pursuant to this Section 9.1 shall be the sole property of TDS.
- 9.2 City's sole and exclusive remedy and TDS's sole and exclusive maximum liability under the warranties contained in this Article 9 shall be, at the sole option of TDS, to repair (with new or functionally operative parts) or replace any defective portion of the affected Cable of which TDS receives prompt notice from City or of which TDS has knowledge during the warranty period.
- 9.3 TDS's warranty does not extend to defects caused by acts of nature, accident, fire or other hazard, nor resulting from City's or its designees' or third-parties' misuse, neglect, alterations, storage, attempts to repair, or use of other supplies not meeting specifications.
- 9.4 City represents and warrants that it will not use the City IRU Fibers for the provision of emergency services (*e.g.*, police and fire dispatching).
- 9.5 THE FOREGOING WARRANTIES AND REMEDIES CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE IRU FIBERS AND UPON ACCEPTANCE OF THE IRU FIBERS ARE EXCLUSIVE REMEDIES IN THE EVENT OF BREACH OF SUCH WARRANTIES. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER FOR ANY REASON.

ARTICLE 10: TAXES

- 10.1 As used in this Article 10, “**Tax**” shall mean any tax, assessment, charge, or levy imposed by any authority having the power to tax, including any city, county, state, or federal government or quasi-governmental agency or taxing authority.
- 10.2 Each Party shall be responsible for any Tax assessed against its own real or personal property and any and all sales, use, income, gross receipts, or other Tax assessed on the basis of its use of its IRU Fibers.

ARTICLE 11: LIABILITY

- 11.1 Each Party shall be responsible for its own acts, errors, or omissions and for the acts, errors, or omissions of its employees, officers, officials, agents, contractors, boards, committees, and commissions, and shall be responsible for any losses, claims, and liabilities (including providing its own defense) that are attributable to such acts, errors, or omissions arising out of this Agreement. In situations involving joint liability, each Party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, contractors, boards, committees, and commissions.
- 11.2 Neither Party shall be liable to the other for any indirect, special, punitive, or consequential damages (including, but not limited to, any claim for loss of services) arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either Party, its departments, elected officials, board members, commissioners, directors, officers, employees, servants, contractors, and/or agents.
- 11.3 No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of any provision of Wis. Stat. § 893.80 or § 345.05 or any other notice requirements, governmental immunities, or damages limitations that may apply to City or any of its utilities, departments, employees, officers, elected officials, board members, commissioners, or agents.
- 11.4 Nothing contained herein shall operate as a limitation on the right of either Party to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the operation or use of the City Fiber System, the TDS Fiber System, or any IRU Fibers. In such case, each Party shall assign such rights or claims, execute such documents, and do whatever else may be reasonably necessary to enable the injured Party to pursue any such action against such third party.

ARTICLE 12: FORCE MAJEURE

- 12.1 The obligations of the Parties (except for the payment of money hereunder) are subject to force majeure, and neither Party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; fire; flood; earthquake; lightning; unusually severe weather; contractor unavailability; material or

facility shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules, and regulations or restrictions (collectively "**Regulations**") (but not to the extent the delay caused by such could be avoided by rerouting the Cable if such a reroute was commercially reasonable); condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either Party. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification shall be given by the excused Party of the cause and of the estimated duration of the delay, when possible.

ARTICLE 13: AUTHORIZATIONS AND REQUIRED RIGHTS-OF-WAY

- 13.1 Each Grantee will be responsible for the appropriate government filings, licenses, or other requirements to place the IRU Fibers it receives under this Agreement into operation, including, but not limited to, applicable municipal licenses and/or franchise agreements, provided, however, the City shall not unreasonably withhold, condition, or delay any such authorizations sought by TDS.
- 13.2 TDS with respect to the Segments containing the City IRU Fibers shall obtain, on or before Acceptance, any and all right-of-way agreements, easements, licenses, rights, or other agreement necessary for the use of poles, conduit, cable, wire, physical plant facilities, and/or access to real property underlying the Segments containing the City IRU Fibers ("**Rights-of-Way**" or "**Rights**"). Further, as of Acceptance, TDS shall obtain any and all rights, licenses, franchises, authorizations, agreements, permits, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) and collectively referred to as "**Authorizations**," that are necessary for the construction and maintenance of the Segments containing the City IRU Fibers.
- 13.3 It is expressly understood that each Party's obligations under this Agreement are conditioned upon and shall in all respects be subject to the continuation or acquisition of the Rights and Authorizations. Each Party shall use commercially reasonable efforts to obtain or to cause such Rights and Authorizations to remain effective throughout the duration of the IRU Term. Copies of any and all agreements with respect to Rights and Authorizations shall be made available to the other Party upon request. If confidentiality obligations under such agreements preclude provision of the entire document, certified summaries of the substantive provisions thereof will be provided. In the event either Party is unable to resolve any issue with respect to its Rights or Authorizations in a manner reasonably acceptable to the other Party, such other Party may, after providing thirty (30) days prior written notice, attempt to resolve the issue directly with the grantor of such Rights and Authorizations.

ARTICLE 14: RELOCATION OF CABLE

- 14.1 If either Grantor is required to relocate its Cable containing the IRU Fibers or any of the appurtenant facilities used or required in providing the IRU Fibers to Grantee, such Grantor shall be solely responsible for relocating the affected portions of its Fiber System and

Grantee shall reimburse Grantor for Grantee's Proportionate Share of all costs associated with the relocation of the affected Segment containing the IRU Fibers (except for any portion of such costs that are reimbursed by a condemning authority—see Section 15.3 below).

ARTICLE 15: CONDEMNATION

- 15.1 In the event any portion of either Party's Fiber System or the public or private rights-of-way in or upon which it has been installed, become the subject of a condemnation proceeding by any governmental agency or other party cloaked with the power of eminent domain for public purpose or use, then and in such event, it is agreed that such Party shall be entitled to pursue an award in such proceedings and shall be solely entitled to any award arising therefrom.
- 15.2 Upon its receipt of a formal notice of condemnation or taking of any portion of its Fiber System that includes IRU Fibers, the Grantor owning such Fiber System shall notify the Grantee promptly of the condemnation proceeding. The Grantor whose Fiber System is affected shall also notify the Grantee of any similar threatened condemnation proceeding and agrees not to sell the Cable or release public or private rights-of-way to such acquiring agency, authority, or other party in lieu of condemnation without the prior written consent of such Grantee, which consent shall not be unreasonably conditioned, delayed, or denied.
- 15.3 It is expressly recognized and understood by the Grantee that relocation costs resulting from any such condemnation proceeding may not be reimbursed by the condemning authority and that Grantee shall pay its Proportionate Share of all costs associated with the relocation of the affected Segment containing the IRU Fibers in excess of such costs which were reimbursed by the condemning authority.

ARTICLE 16: REPLACEMENT OF IRU FIBERS

- 16.1 If the IRU Fibers do not function for their intended purpose at any time during the IRU Term and the issue is not able to be remedied by the performance of maintenance or repair under Article 7, Grantor will replace the affected IRU Fibers, either with other strands from Grantor's Segment containing the IRU Fibers or with new Fiber, at no cost to Grantee (except that Grantee will be responsible for any cost associated with deploying Fiber strands outside of the public right of way or public utility easements to reach Grantee's facilities).
- 16.2 Should Grantor replace or provide alternative IRU Fibers at any time during the IRU Term, this Agreement will continue with respect to such replaced or alternative IRU Fibers on the same terms and conditions set forth herein.

ARTICLE 17: DEFAULT

- 17.1 Neither Party shall be in default under this Agreement unless and until the other Party shall have given the defaulting Party written notice of such default and the defaulting Party shall have failed to cure the default within thirty (30) days after receipt of such notice; provided, however, that where a default cannot be reasonably cured within the 30-day period and

where the defaulting Party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice.

- 17.2 Upon the failure of the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party may take any action it determines, in its reasonable discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the default.
- 17.3 The Parties acknowledge and agree that irreparable damage may occur in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. It is accordingly agreed that each Party shall be entitled to seek injunctive or similar preliminary relief to prevent breaches or cure defaults of the provisions of this Agreement by the other and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which the Party may be entitled by law or equity.

ARTICLE 18: NOTICES

- 18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to TDS:

TDS Metrocom, LLC
Attention: Vice President Field Services
525 Junction Road
Madison, WI 53717

With a copy to:

TDS TELECOMMUNICATIONS LLC
525 Junction Road
Madison, WI 53717
Attention: Legal Department

If to the City of Plymouth:

Attn: City Administrator/Utilities Manager
City of Plymouth
900 CTH PP
PO Box 277
Plymouth, WI 53073-0277

With a copy to:

Julia K. Potter
Boardman & Clark LLP
1 South Pinckney Street
P.O. Box 0927

- 18.2 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when (i) personally delivered; (ii) mailed by certified mail, return receipt requested, with postage prepaid; or (iii) sent via nationally recognized overnight delivery service and, except where specifically provided for elsewhere, properly addressed.

ARTICLE 19: ASSIGNMENT, SUCCESSION

- 19.1 City shall not assign this Agreement to any other party without the prior written consent of TDS.
- 19.2 Except as provided in this Article 19, TDS shall not assign this Agreement to any other party without the prior written consent of City, provided, however, that without such consent, TDS shall have the right to assign or otherwise transfer this Agreement, in whole or in part, to any parent, subsidiary, or affiliate of TDS or to any person, firm, or corporation which shall control, be under the control of, or be under common control with TDS, or any corporation or entity into which TDS, or a subsidiary of TDS, may be merged or consolidated or which purchases all or substantially all of the assets of TDS or a subsidiary of TDS. In such case, TDS shall give City written notice of the name of the assignee or transferee and the contact information for such entity within thirty (30) days after the assignment or transfer.
- 19.3 Subject to the provisions of this Article 19, each of the Parties' respective rights and obligations hereunder shall be binding upon and shall inure to the benefit of the Parties and each of their respective permitted successors and assigns.

ARTICLE 20: GOVERNING LAW

- 20.1 This Agreement shall be interpreted and construed in accordance with the laws of the state of Wisconsin, without regard to its conflict of laws principles that would cause the laws of any other jurisdiction to apply.

ARTICLE 21: INDEPENDENT CONTRACTOR

- 21.1 The performance by TDS and/or City of all duties and obligations under this Agreement shall be as independent contractors and not as agents of the other Party, and no persons employed or utilized by a performing Party shall be considered the employees or agents of the other. Neither Party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The Parties agree that this Agreement does not create a partnership between, or a joint venture of, TDS and City.

ARTICLE 22: DISPUTE RESOLUTION

- 22.1 It is the intent of City and TDS that any disputes which may arise between them, or between the employees or contractors of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the Parties'

representatives. For that purpose, TDS and City shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the Parties, such letters to be furnished by each Party to the other within thirty (30) days from the date of the last signature on this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the Parties' designated representatives. The Parties' designated representatives shall use reasonable efforts to reach a mutually agreeable resolution of the disputed issue, in writing, within two (2) weeks of such referral, or whatever longer or shorter period to which the Parties may agree. Either Party may modify the designated representative upon written notice to the other Party.

- 22.2 In the event the Parties' representatives are unable to resolve any claims or disputes arising under this Agreement within the applicable time period and provided that the defaulting Party, if any, has been afforded the opportunity to cure as provided in Article 17, either Party is free to pursue any remedies available to it in law or equity or under this Agreement, provided, however, that a party does not need to wait until the end of the applicable cure period to seek injunctive relief.

ARTICLE 23: LIENS

- 23.1 In the event any of the IRU Fibers become subject to any mechanics', artisans', or materialmen's lien, or other encumbrance chargeable to or through Grantor of such IRU Fibers that interferes with the IRU Fibers or jeopardizes the Grantee's use of such IRU Fibers, the Grantor of the IRU Fibers shall promptly cause such lien or encumbrance to be discharged and released of record (by payment, posting of bond, court deposit, or other means) without cost to the Grantee and shall indemnify the Grantee against all costs and expenses (including attorney's fees) incurred in discharging and releasing such lien or encumbrance; provided, however, that if any such lien or encumbrance is not so discharged and released within thirty (30) days after written notice by the Grantee to the Grantor, then Grantee may pay or secure the release or discharge thereof at the expense of Grantor. Grantor shall reimburse Grantee for such payments within thirty (30) days of its receipt of an invoice therefor.
- 23.2 Grantee agrees and acknowledges that, except for the IRU Fibers, Grantee has no right to use any of the Fibers within Grantor's Fiber System and that Grantee shall keep any and all of Grantor's Fibers free from any liens, rights, or claims of any third party attributable to Grantee.

ARTICLE 24: MISCELLANEOUS

- 24.1 The headings contained in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions, or conditions of this Agreement.
- 24.2 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

- 24.3 No provision of this Agreement shall be interpreted to require any unlawful action by either Party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the Parties shall promptly negotiate a replacement section or clause that will achieve the intent of such unenforceable section or clause to the extent permitted by law.
- 24.4 Nothing contained in this Agreement shall be construed to waive any obligation or requirement of TDS to obtain all necessary approvals, licenses, and permits (if any) from the City in accordance with its ordinances and usual practices and procedures, nor limit or affect in any way the right or authority of the City to approve or reasonably disapprove any plans or specifications or to impose reasonable limitations, restrictions, and requirements as a condition of any such approval, license, or permit.
- 24.5 This Agreement may be amended only by a written instrument executed by the Party against whom enforcement of the modification is sought.
- 24.6 No failure to exercise and no delay in exercising, on the part of either Party, any right, power, or privilege hereunder shall operate as a waiver thereof, except as expressly provided in this Agreement. Any waiver by either Party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both Parties.
- 24.7 In the event of a conflict between the provisions of this Agreement and those of **Exhibit A**, the provisions of **Exhibit A** shall prevail only if such Exhibit expressly states that the terms are in conflict and shall control over those in this Agreement. If there is a conflict or difference between this Agreement and other exhibits, this Agreement shall prevail.
- 24.8 This Agreement has been fully negotiated between and jointly drafted by the Parties.
- 24.9 All actions, activities, consents, approvals, and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner.
- 24.10 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

ARTICLE 25: COUNTERPARTS

- 25.1 This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Furthermore, the Parties may execute and deliver this Agreement by electronic means, such as .pdf, DocuSign, or similar format. The Parties agree that delivery of this Agreement by electronic means will have the same force and effect as delivery of original signatures and that the Parties may use such electronic

signatures as evidence of the execution and delivery of the Agreement to the same extent as an original signature.

ARTICLE 26: ENTIRE AGREEMENT

26.1 This Agreement, and any exhibits or attachments referenced in and attached hereto or to be attached hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written. For the sake of clarity, the exhibits and attachments hereto are incorporated into and form part of this Agreement.

[SIGNATURE PAGE FOLLOWS]

City of Plymouth, Wisconsin

Signed: _____

By: Timothy Blakeslee

Its: City Administrator/Utilities Manager

Date: _____

TDS Metrocom, LLC

Signed: _____

By: _____

Its: Vice President of Field Services

Date: _____

ATTACHMENTS/EXHIBITS:

- Exhibit A: Description of Segments
- Attachment A: Map of Segments
- Exhibit B: Splicing, Testing, and Acceptance Standards
- Exhibit C: Form of Acceptance/Rejection Notice
- Exhibit D: Maintenance and Repair Procedures

**EXHIBIT A
DESCRIPTION OF SEGMENTS**

CITY IRU FIBERS IN TDS FIBER SYSTEM

Segment #	FROM	TO	ROUTE LENGTH IN MILES	# IRU FIBERS IN SEGMENT	TOTAL # FIBER STRANDS in SEGMENT
1	43°44'49.16"N 87°57'39.87"W	43°44'50.35"N 87°57'35.50"W	0.1	4	48
2	43°44'53.57"N 87°58'37.88"W	43°46'15.50"N 43°46'15.50"N	0.93	4	48
3					
4					
5					
6					
7					
8					
+					
10					
11					
12					
13					
14					
15					
16					
17					

Total Mileage: 1.03

Initial IRU Term: Begins on the date all City IRU Fibers described on Exhibit A have been accepted (see Article 3 of the Agreement) and terminates December 31, 2045.

Number of City IRU Fibers per Segment: 4 (as indicated above)

IRU Fee: None

Annual Maintenance Fee: None

Map of Segments: Attachment A

TDS IRU FIBERS IN CITY FIBER SYSTEM

Segment #	FROM	TO	ROUTE LENGTH IN MILES	# IRU FIBERS IN SEGMENT	TOTAL # FIBER STRANDS in SEGMENT
1	43°47'26.96"N 87°54'5.61"W	43°44'49.16"N 87°57'39.87"W	7.95	12	144
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					

Total Mileage = 7.95

Initial IRU Term: Begins on the date all TDS IRU Fibers described on **Exhibit A** have been accepted (see Article 3 of the Agreement) and terminates on December 31, 2045.

Number of TDS IRU Fibers per Segment: 12 (as indicated above)

IRU Fee: None

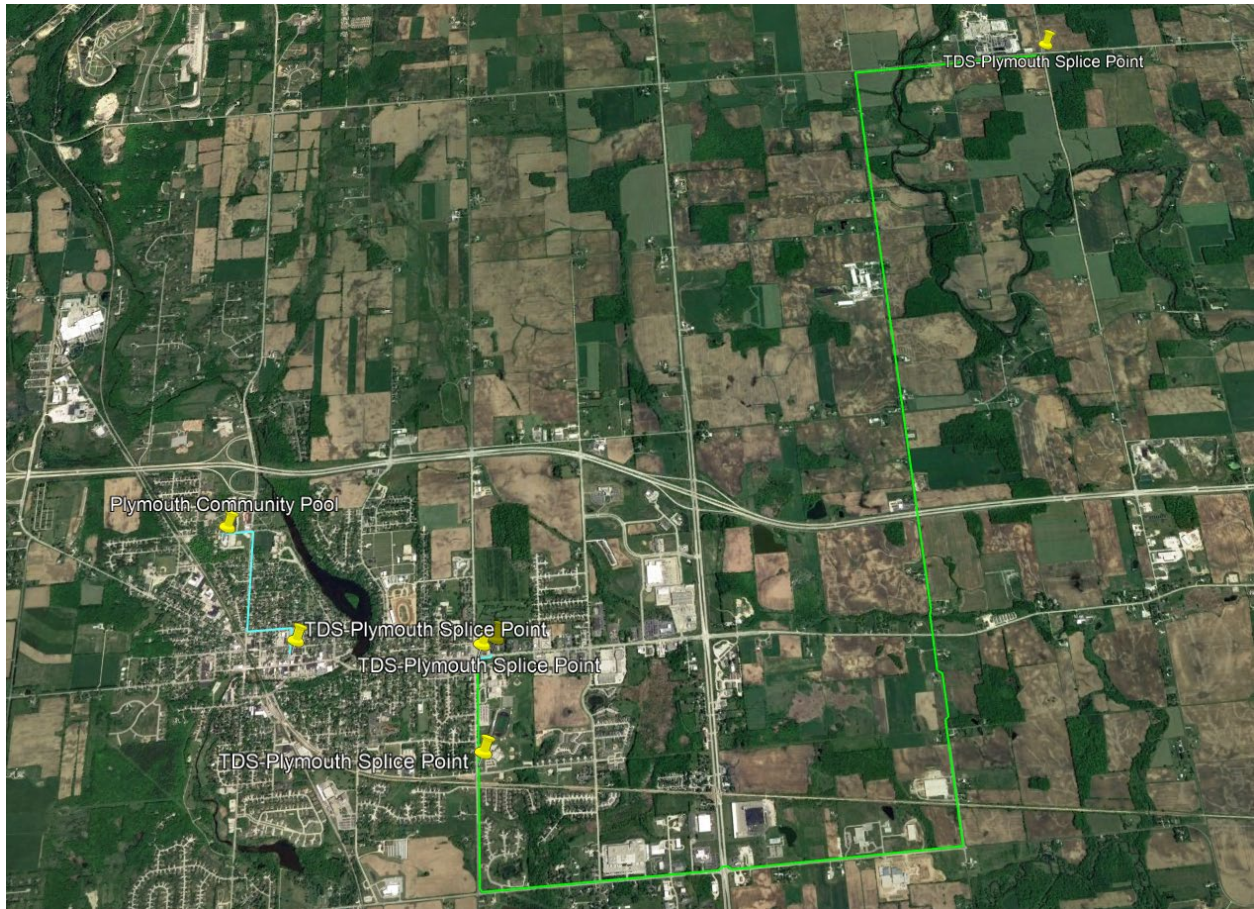
Annual Maintenance Fee: None

Map of Segments: Attachment A

**ATTACHMENT A
MAP OF SEGMENTS (1 of 3)**

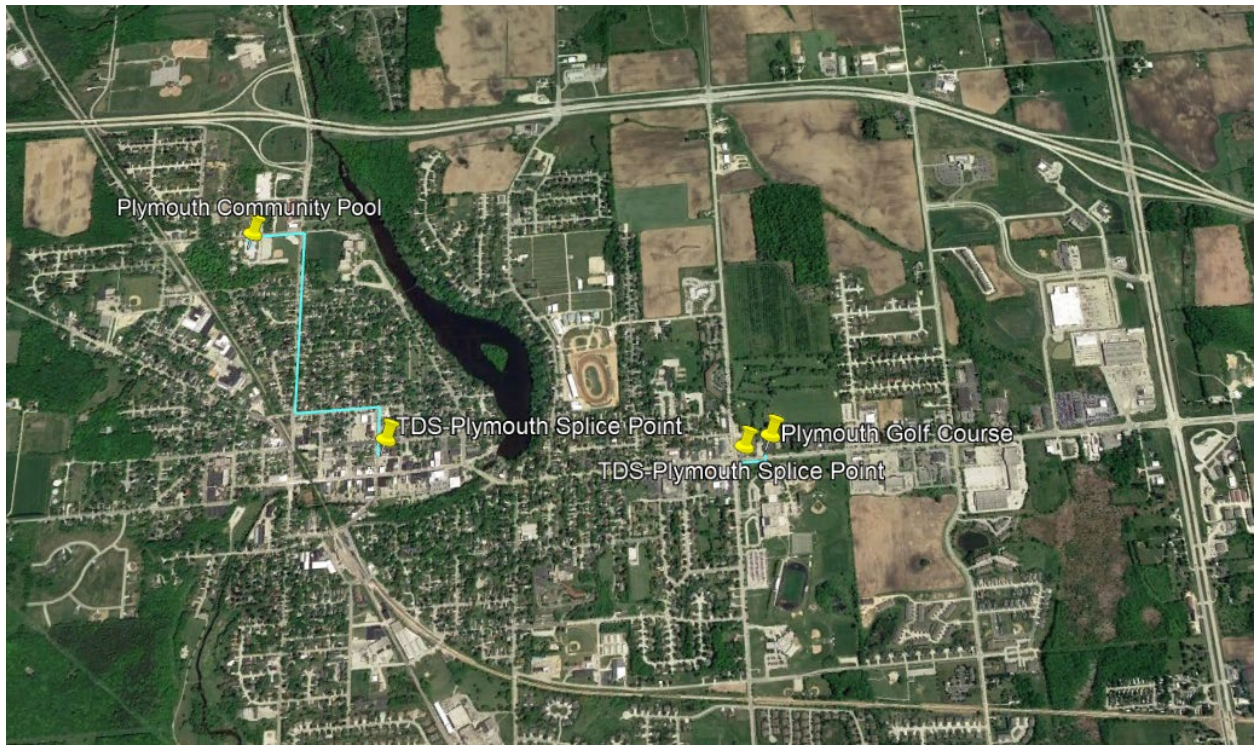
TDS 12F (Green) in City Sheath = 7.95 Total Fiber Miles

City 4 F (Aqua) in TDS Sheath = 1.03 Total Fiber Miles



**ATTACHMENT A
MAP OF SEGMENTS (2 of 3)**

City 4F(Aqua) in TDS Sheath = 1.03 Total Fiber Miles



**ATTACHMENT A
MAP OF SEGMENTS (3 of 3)**

TDS 12F(Green) in City Sheath = 7.95 Total Fiber Miles

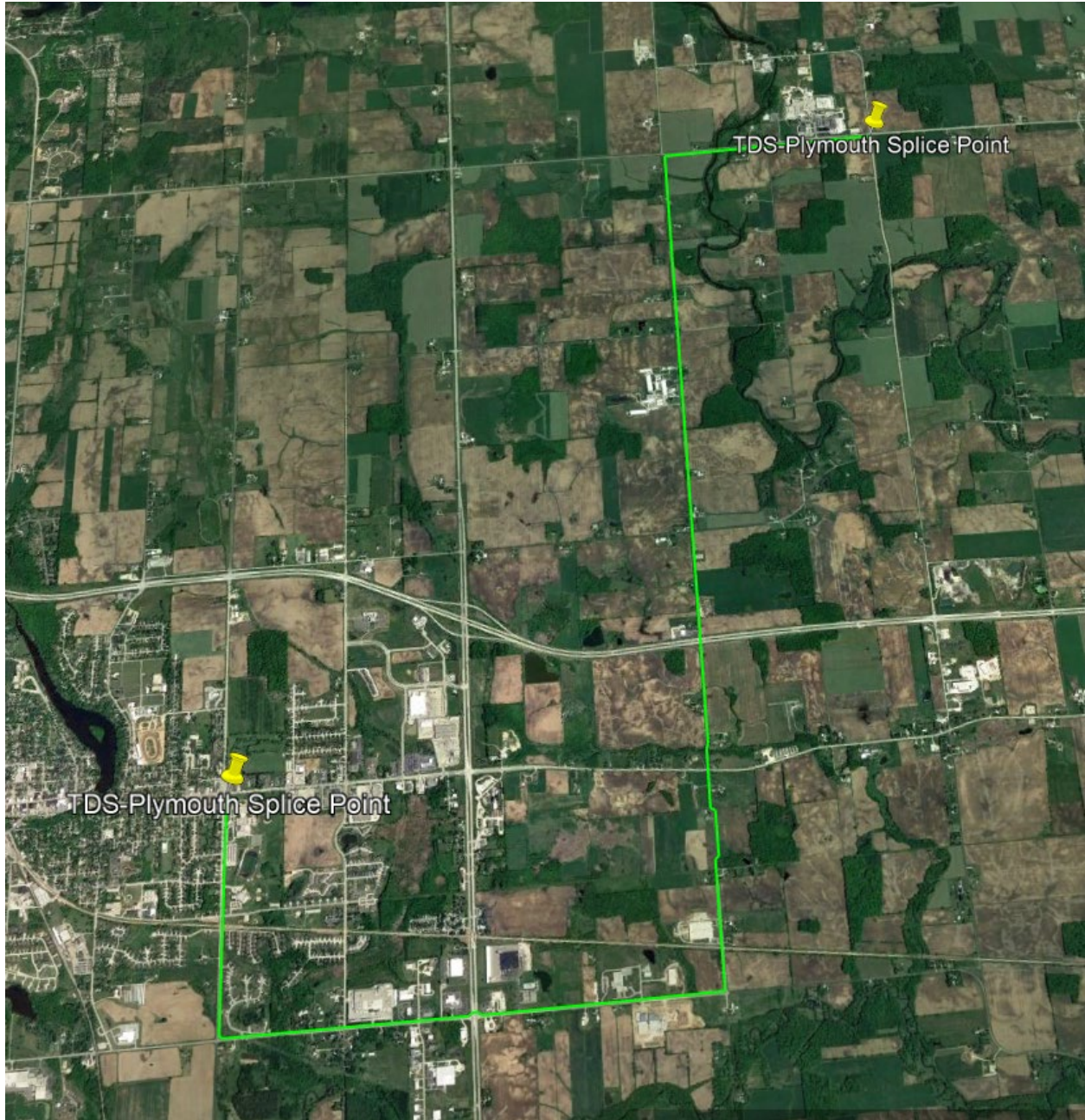


EXHIBIT B
SPLICING, TESTING, AND ACCEPTANCE STANDARDS

1. All splices will be performed with an industry-accepted fusion splicing machine.
2. After end-to-end (site-to-site) connectivity on the Fibers, bi-directional span testing will be completed. These measurements will be made on existing Fibers to be tested and otherwise after all cable installation activities are complete for each span.
 - 2.1 Installed loss measurements at 1550nm (and 1310nm when possible) will be performed using an industry accepted laser source and power meter. Continuity testing will be done on all Fibers concurrently.
 - 2.2 OTDR traces will be taken at 1550nm (and 1310nm when possible) and splice loss measurements will be analyzed. Traces shall be saved in SOR format, unless another OTDR format is agreed to by both Parties. All testers shall be calibrated within 12 months of test date.
 - 2.3 All testing, power levels and OTDR traces, will be conducted at 1550nm (and 1310nm when possible).
 - 2.4 OTDR traces will be provided in pdf and raw formats.
3. The splicing standards are as follows:
 - 3.1 The objective loss value of a connector and its associated splice will be 0.50 dB or less. This value does not include the insertion loss from its connection to the FOP.
 - 3.2 The objective for each fiber within a span shall be an average bi-directional loss of 0.15 dB or less for each splice. For example, if a given span has 10 splices, each fiber shall have a total bi-directional loss (due to the 10 splices) of 1.5 dB or less. Individual bi-directional loss values for each splice will be reviewed for high losses.
 - 3.3 The aforementioned standards are objectives, not the basis for acceptance.
4. The Acceptance standards for each Fiber per span shall not exceed the following calculated loss for any given span:

$$\text{Span Loss} = a (\text{span distance in kilometers}) + b(0.15\text{dB}) + c (0.50 \text{ dB})$$

Where:

a = maximum fiber loss in dB per kilometer for the specific fiber type/manufacturer at 1550nm and 1310nm.

b = number of splice locations for the span

c = number of connectors for the span

5. All splices will be protected with heat shrinks. Buffer tubes/ribbons will not be split across more than one splice tray. An industry accepted splice enclosure will be used on all splices. An industry-accepted non-encapsulated splice enclosure will be used on all splices.
6. City shall have the option to have one or more representatives present to observe the testing undertaken by TDS as part of the Acceptance testing process.

EXHIBIT C
FORM OF ACCEPTANCE/REJECTION NOTICE

Check one box:

Fiber Accepted (fill in acceptance statement below):

Pursuant to Article 5 of the Reciprocal Dark Fiber IRU Agreement between City of Plymouth, Wisconsin (“City”) and TDS Metrocom LLC, (“TDS”) dated May ____, 2023, delivery of ____ (__) Fibers was made by _____ to _____ for the following Segment(s) listed on **Exhibit A**: Segment ID Numbers: _____.

Fiber Rejected (fill in reason statement below):

Reason for Rejection:

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D MAINTENANCE AND REPAIR PROCEDURES

1.0 TROUBLE REPORTING

Prior to calling a trouble ticket, the City must first:

- Verify electric power to each site
- Verify power to the individual equipment (optical switch) at each site for the link in question (power cord, power supply, battery backup / UPS Rack Power Distribution Unit) if applicable
- Visually verify the link is actually down (no link light on SFP's / optics)
- Properly clean fiber optic connectors and ports by utilizing appropriate fiber optic connector/port cleaning tools
- Reseat the associated fiber optic jumper connectors and fiber optic ports on either end of the circuit to try and re-establish the link
- Reseat SFP optics / swap SFP optics with new spare SFP's on either end of the circuit to verify that it's not a failed customer-owned SFP
- Verify the switch ports configuration through Command Line Interface (CLI)
- Determine if switch ports are Up/Down or Down/Down. If Down/Down, re-enable the switch port using the CLI

Upon TDS's Network Management Center receiving a trouble report from City, TDS will use commercially reasonable efforts to dispatch qualified personnel to the location of the outage within 2 hours. At the same time the call will be escalated to TDS's Field Operations Manager. TDS's Field Operations Manager will respond with on call qualified personnel to isolate the problem. The problem may then be escalated as necessary for notification.

2.0 ESCALATION LISTS

• City Escalation List

Electrical Operations Manager
Cell: 920-838-5231; Office: 920-893-3855

Asst. Electrical Operations Manager
Cell: 920-838-5298; Office: 920-893-3856

IT Manager
Cellphone: 920-838-4409; Office: 920-893-3847

TDS Escalation List

TDS Network Management Center
888-790-1216

Glen Campbell
(608) 848-2586
Glen.Campbell@tdstelecom.com

Michael Schneider
(608) 828-9451
Michael.Schneider@tdstelecom.com

3.0 ROUTINE MAINTENANCE STANDARDS

Maintenance of the fiber plant should be completed on a regular recurring basis and documented. Properly installed fiber plant normally needs minimal routine maintenance. Most hazards to fiber plant are external in nature, such as dig ups, pole hits, gun shots, etc. Most destructive events are detected immediately and corrected with plant restoration. A well implemented maintenance plan will permit correction of marginal plant conditions that might otherwise become restoration events. TDS's Network Management Center should be notified in advance of any scheduled Outside Plant facilities (OSP) maintenance activity reported or planned:

TDS Network Management Center
888-790-1216

4.0 CABLE ROUTE SURVEILLANCE

OSP are periodically inspected by field personnel. During this periodic inspection the Cable route is driven/walked to inspect for discrepancies that may affect cable integrity. Any discrepancies found are documented and forwarded into the Outside Plant Maintenance desk for correction and repair as necessary. The following are some of the OSP items that will be inspected:

- Cable route integrity (e.g.: erosion)
- Condition of poles, pedestals, risers, lashing wire, route markers, and signs
- Clearance of aerial facilities
- Construction activity in the area near the cable