Res 294 Significant

CONTRACT COVERSHEET

NOTE: Shaded areas are for County Executive review.

NOTE: Shaded areas are for County Execut	
DEPARTMENT Dublic Sefety Communications	CONTRACT/ADDENDUM #:
Public Safety Communications	Contract Addendum
1. This contract, grant or addendum: AWARDS ACCEPTS	If Addendum, please include
2. This contract is discretionary YES NO	original contract number POS
3. Term of Contract or Addendum: From: November 6, 2015 To: November 5, 2024	Co Lesse Co Lessor
4. Amount of Contract or Addendum \$219,436.69	Intergovernmental
5. Purpose:	Purchase of Property
Lease radio tower site for DaneCom interoperable voice communications system	Property Sale Other:
6. Vendor or Funding Source: Stoughton Utilities	
7. MUNIS Vendor Code: 7458	
8. Bid/RFP Number:	
9. If grant: Funds Positions?	tching funds?
10. Are funds included in the budget?	
11. Account No. & Amount, Org. & Obj. DANECOM2200 Site Leases	Amount \$ 216,000
Account No. & Amount, Org. & Obj	Amount \$
Account No. & Amount, Org. & Obj	Amount \$
12. Is a resolution needed: YES NO If "YES," please attach a copy of If Resolution has already been approved by the County Board, Resolution No. &	
13. Does Domestic Partner equal benefits requirement apply? YES INO	
14. Director's Approval	
CONTRACT REVIEW/APPROVALS	VENDOR
Initials Ftnt Date In Date Out	Vendor Name & Address
Received 11/19/15	Stoughton Utilities 600 S 4th St
Controller	Stoughton, WI 53589
Corporation Counsel	Contact Person
Risk Management /// ////////////////////////////////	Robert Kardasz
ADA Coordinator // 1/10/15 // 1/10/15	Phone No. 608-877-7423
COM Purchasing Agent MR S 11 19 15 County Executive	E-mail Address
County Executive	RKardasz@StoughtonUtilities.com
Footnotes:	
k	
Return To: Name/Title: Rich McVicar, Technical Services Manager Dept.: Pub	olic Safety Communications
Phone: 608-283-2911	
	dison, WI 53703-3342

	ERTIFICATION e attached contract: (Check as many as apply)
	conforms to Dane County's standard Purchase of Services Agreement form in all respects
	conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy¹
7	is a non-standard contract which has been reviewed or developed by corporation counsel which has not been changed since that review/development
	is a non-standard contract previously reviewed or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy ¹
	is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
	contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
	contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
	contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
	contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy ¹
Dat	te: 29 October 2015 Signed:
Tole	ephone Number: 608-283-2911 Signed: Rich McVicar
\$10	AJOR CONTRACTS REVIEW (DCO Sect. 25.20) This review applies only to contracts which both exceed 20,000 in disbursements or receipts and which require county board review and approval. ECUTIVE SUMMARY (Attach additional pages, if needed).
1.	Department Head Contract is in the best interest of the County. Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.
	Date: 29 oct 2015 Signature:
2.	<u>Director of Administration</u> ☐ Contract is in the best interest of the County. Comments:
	Date: Signature: Signature:
3.	Comporation Counsel Contract is in the best interest of the County. Comments:
	Date: Signature:

¹A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract my means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).



JOE PARISI County Executive

John Dejung, ENP Director

608-267-1911

COUNTY OF DANE Public Safety Communications

City-County Building, Room 109 210 Martin Luther King, Jr. Boulevard Madison, Wisconsin 53703-3342 PH: 608/267-3911 • FAX: 608/266-9861 PAUL LOGAN, RPL Operations Manager (608) 267-3912

KEVIN FOSSO, RPL Assistant Operations Manager (608) 283-2914

RICH McVICAR, ENP Technical Services Manager (608) 283-2911

An Accredited Center of Excellence

Date:

October 29, 2015

To:

Joe Parisi

From:

Rich McVicar

Subject:

Lease with Stoughton Utilities

User-requested improvements to the DaneCom interoperable voice communications system require additional tower sites, and this lease will provide one of them.

I respectfully request your approval of this lease.

1 2	2015 RES-294 AS AMENDED BY PP&J ON 10/20/2015
3	AUTHORIZING A LEASE WITH STOUGHTON UTILITIES
4	
5	Dane County desires to place new interoperable voice radio
6	communications equipment on a water tank and property owned by Stoughton
7	Utilities in the City of Stoughton. The location of the site is 400 Racetrack Rd,
8	Stoughton, Wisconsin. This is an important site for the expanded DaneCom
9	system.
10	· · · · · · · · · · · · · · · · · · ·
11	An agreement has been negotiated for the desired space at a cost of
12	\$1,800.00 per month. and for a term of years.
13	
14	NOW, THEREFORE, BE IT RESOLVED that the County of Dane does
15	hereby approve and authorize entering into the above-described license with
16	Stoughton Utilities, and
17	otoughton othinoo, and
18	BE IT FINALLY RESOLVED that the Dane County Clerk and the County
19	Executive are hereby authorized to execute the lease on behalf of the County of
	Dane.
20	Dalie.
21	

EXECUTION VERSION

LICENSE AGREEMENT

This License Agreement ("Agreement"), dated as of the latter of the signature dates below (the "Effective Date"), is entered into by the City of Stoughton, Wisconsin a municipal corporation, with its principal offices located at 381 E. Main Street, Stoughton, Wisconsin, 53589 ("Licensor") and by Dane County, a quasimunicipal corporation, whose address is 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53703-90334 ("Licensee").

BACKGROUND

Licensor owns or controls that certain tract of land, improved with a water tower (the "Tower"), located at 400 Race Track Road, in the City of Stoughton, Dane County, Wisconsin, and (the "Property"). A legal description of the Property is shown on Exhibit A. Licensee desires to use a portion of the Property to install

Recording Area

Return to:

Stoughton Utilities Director 600 S. 4th Street Stoughton, WI 53589

Parcel ID No: 281/0511-091-8811-1

and operate communications equipment. Licensor desires to grant to Licensee the right to use a portion of the Property in accordance with this Agreement.

The Parties agree as follows:

1. PREMISES.

- (a) Licensor hereby grants to Licensee the right to use a portion of the Property consisting of:
- (i) a 25' x 50' parcel containing approximately 1250 square feet of ground space, including the air space above the ground space for the placement of Licensee's Communications Facility (as defined herein);
- (ii) space for any structural steel or other improvements to support Licensee's equipment (collectively, the space referenced in (i) and (ii) is the "Equipment Space");
- (iii) that certain space on the Tower, as generally depicted on Exhibit B, where Licensee shall have the right to install its antennas and other equipment (collectively, the "Antenna Space"); and
- (iv) those certain areas where Licensee's conduits, wires, cables, fiber optic cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space and between the Equipment Space and the electric power, telephone, and

fuel sources for the Property (collectively referred to as the "Connection Space"). The Equipment Space, Antenna Space, Connection Space and Easements (as defined below) are collectively referred to as the "Premises "and are described and/or depicted on Exhibit B. A legal description of the ground space portion of the Premises shall be a part of Exhibit A.

(b) Licensor shall also grant Licensee, its employees, agents, contractors and subcontractors (collectively, "Licensee's Authorized Representatives") and Licensee shall accept the following: (i) a non-exclusive access easement ("Access Easement") allowing ingress and egress up to the base of the Tower and (ii) non-exclusive utility easements ("Utility Easements") for the underground installation and maintenance of utility wires, cables, conduits, and pipes, in the specific locations designated on the Construction Plans (as defined below). Exhibit A shall contain a legal description of the access and utility easements (collectively, the "Easements").

2. PERMITTED USE/COMPLIANCE WITH LAWS.

- (a) Throughout the Term of this Agreement (as defined below), Licensee shall use the Premises solely for the provision of wireless communications services through the installation, operation, and maintenance of its "Communications Facility," which is defined as Licensee's communications equipment as approved by Licensor, including no more than ten (10) antennas and related equipment (including an equipment shelter, utility wires, cables, conduits, accessories, and fencing, if any)(the "Permitted Use").
- Licensee, at its expense, shall diligently, faithfully and promptly wholly obey and conform with all federal, state and local orders, rules, regulations and laws, including all Federal Communications Commission ("FCC") and Federal Aviation Administration ("FAA") rules, in relation to any of its activities conducted upon, above or adjacent to the Premises and including the American National Standards Institute's ("ANSI") "Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields" as set forth in the current ANSI standard or any FCC standard which supersedes this standard or any Environmental Protection Agency ("EPA") rules or regulations that may be adopted in the future that supersede this standard. In addition, Licensee shall adhere to all OSHA (i.e., Occupational Safety and Health Administration) safety requirements. Licensee shall provide to Licensor a copy of any written notice Licensee receives from any governing authority regarding non-compliance with any federal, state or local order, rule, regulation or law within thirty (30) days of Licensee's receipt of any such notice of non-compliance. Licensee shall pay, as they become due and payable, all fees, charges, taxes and expenses required for Licensee's use of the Premises. Any fines or penalties imposed for improper or illegal installation or operation of Licensee's Communications Facility shall be Licensee's sole responsibility.
- (c) Licensee shall be solely responsible for taking all steps necessary to ensure that, in installing its Communications Facility on the Tower, the Tower remains in compliance with any and all applicable FAA regulations in connection with Licensee's use of the Tower. If Licensee's installation and use of the Communications Facility causes the Tower to fall out of compliance with such FAA regulations, Licensee shall be solely responsible for any and all costs associated with bringing the Tower into compliance, including, among other things, installing

and maintaining any lighting equipment that may be required, and Licensee shall cure any such non-compliance within forty-five (45) days of receiving notice of such non-compliance from Licensor.

(d) Licensee shall not advertise on the Property or on any structure on the Property, except for any signage required by FCC regulation.

3. LICENSEE ACKNOWLEDGEMENTS.

- (a) Licensee acknowledges and agrees that, in accepting this Agreement, Licensor has made no representations or warranties, express or implied, regarding: (i) the physical condition of the Property or Premises, including the Tower; (ii) the suitability of the Premises for Licensee's desired purposes; or (iii) the state of title of the Property.
- (b) Licensee acknowledges and agrees that: (i) as part of Licensee's consideration pertaining to the feasibility of the Property for Licensee's use, Licensee shall conduct investigations and inspections of the Property and (ii) that Licensee accepts the Premises and all structures thereon in "as-is, where-is and with all faults" condition.

4. INSTALLATION AND MAINTENANCE.

- (a) Licensee shall, at its sole cost and expense, install, operate, and maintain its Communications Facility on the Premises. Licensee shall be responsible for any damage done to the Property caused by Licensee's installation, maintenance or operation of the Communications Facility and shall promptly and diligently repair such damage, at Licensee's expense, and to Licensor's reasonable satisfaction, within thirty (30) days of receipt of notice from Licensor. If Licensee fails to repair the damage within such thirty-day period or if Licensor determines that the repair work must be completed in fewer than thirty (30) days, Licensor shall have the right to make the repairs at Licensee's expense, upon notice to Licensee of Licensor's election to make any such repairs. Licensee agrees to pay all costs and expenses incurred by Licensor in relation to Licensor maintaining the structural integrity of the Tower in connection with Licensee's installation and operation of the Communications Facility. Licensee agrees to pay all costs and expenses Licensor incurs associated with preparing the Tower for installation of the Communications Facility and returning the Tower to service after the installation.
- (b) No Licensee equipment shall be stored on the Property outside of Licensee's equipment shelter. Licensor shall be responsible for snow removal from any driveway Licensor approves to be installed by Licensee and will invoice Licensee for such service. Licensee shall pay such invoice within thirty (30) days of its receipt.
- (c) Licensor shall invoice Licensee for any costs or expenses Licensee becomes responsible for pursuant to this Section 4. Licensee shall pay any such invoice pursuant to this Section 4 within thirty (30) days of its receipt. Any work Licensor performs under this Agreement, the cost of which is Licensee's responsibility, shall be charged out at Licensor's annually adopted fully loaded labor rate and transportation rate, which rates shall include a charge for Administrative and General costs.

- (d) Licensee shall not install its Communications Facility on the Premises without first obtaining all necessary federal, state, and local governmental approvals and permits for such installation. In addition, prior to commencing installation, Licensee shall submit detailed construction plans, surveys, and drawings ("Construction Plans") for all improvements to Licensor for Licensor's written approval, which approval must be obtained before Licensee may commence any installation or construction on the Premises. The Construction Plans, as approved, shall be attached as Exhibit B. Grounding and lightning protection plans and installation shall be subject to Licensor's approval as part of the Construction Plans. If Licensor disapproves the Construction Plans, Licensee may provide Licensor with revised plans. In the event Licensor disapproves the Construction Plans upon a second submission, Licensee may terminate this Agreement on giving Licensor ten (10) days' prior written notice.
- (e) Licensee's installation of the Communications Facility shall be completed in a neat and workmanlike manner in accordance with sound engineering practices, applicable rules, regulations and laws and in strict compliance with the approved Construction Plans, as reflected in **Exhibit B**. The actual location and installation of all components of the Communications Facility shall be inspected for compliance with the Construction Plans and shall be subject to Licensor's written approval. No cutting, welding, or drilling on the Tower can take place without Licensor's prior written approval. Licensee's facilities located on the Tower shall be painted to match the paint on the Tower. Licensee's Communications Facility shall remain Licensee's exclusive property.
- (f) Licensee shall not modify or add to the Communications Facility or make any additions, alterations or improvements to the Premises or Property ("Modifications") without Licensor's prior written approval. If any of the Modifications increase the size, number or weight of Licensee's existing facilities, Licensee shall be subject to a commercially reasonable increase in its license fee payments under this Agreement. No fewer than thirty (30) days prior to the anticipated installation date of the Modifications, Licensee shall submit to Licensor a proposal for the Modifications and any supplemental materials as may be requested for Licensor's evaluation and approval. If approved by Licensor in writing, the Modifications shall be made at Licensee's sole expense and only upon it first obtaining all necessary federal, state, and local governmental approvals and permits for such Modifications. All of the Modifications shall be made in a neat and workmanlike manner in accordance with sound engineering practices, all applicable rules, regulations and laws, and in strict compliance with Licensee's proposal as approved by Licensor in writing. On making the Modifications, Licensee shall provide to Licensor updated "as built" drawings in the manner specified in Section 4(h).
- (g) All work to be performed on the Tower and the Premises shall be performed by Licensee or Licensee's Authorized Representatives. If the work is to be performed by an independent contractor, on behalf of Licensee, such contractor may not commence any work on the Property without first having been approved in writing by Licensor.
- (h) Licensee, at its expense, and within ninety (90) days after the installation of the Communications Facility, shall provide to Licensor "as built" drawings of the Communications Facility installed on the Premises, showing the actual location of the Communications Facility. Such drawings shall be accompanied by a complete and detailed inventory of the

Communications Facility actually placed on the Premises, all of which shall be attached as Exhibit C.

(i) Licensee shall not permit any claim or lien to be placed against any part of the Property that arises out of work, labor, material or supplies provided or supplied to Licensee, its contractors or subcontractors for the installation, construction, operation, maintenance, or removal of the Communications Facility or use of the Premises.

5. TERM.

- (a) The Agreement shall be effective as of the Effective Date, provided, however, the initial term shall be for ten (10) years ("Initial Term").
- (b) This Agreement will automatically renew for three (3) five (5) year term(s) (each, an "Extension Term"), upon the same terms and conditions, unless either Party notifies the other Party in writing of its intention not to renew this Agreement at least twelve (12) months prior to the expiration of the then existing Term.
- (c) If neither Licensor nor Licensee has given the other written notice of its desire that the Term of this Agreement end at the expiration of the final Extension Term, then upon the expiration of the final Extension Term, this Agreement shall continue in force upon the same terms and conditions for an additional term of one (1) year and for annual terms thereafter (each an "Annual Term") until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. During the Annual Terms, the license fee shall increase in accordance with Section 6(b).
- (d) The Initial Term, any Extension Terms, and any Annual Terms are collectively referred to as the "Term."

6. LICENSE FEE.

- (a) Licensee's obligation to make license fee payments shall commence on the Effective Date, at which time the monthly license fee shall be due and payable in the amount of **One Thousand Eight Hundred Dollars** (\$1,800.00) and thereafter to be paid to Licensor on the first day of each calendar month. The license fee shall be prorated for any partial month.
- (b) During the Term of this Agreement, the license fee shall increase by three percent (3%) over the then existing amount on each annual anniversary date of the Effective Date.
- (c) In the event that Licensee fails to timely pay the license fee, Licensee shall pay to Licensor interest on the total payment due of one and one-half percent (1.5%) per month.

7. INSURANCE.

(a) Licensee agrees that, at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$5,000,000 for injury to or death of one or

more persons in any one occurrence and \$5,000,000 for damage or destruction to property in any one occurrence. Licensee agrees that it will include the City of Stoughton as an additional insured. Licensee shall provide Licensor with a certificate of insurance before Licensee shall be permitted access to the Tower. Within thirty (30) days after execution of this Agreement (but prior to the commencement of installation) and within ten (10) days of each insurance policy expiration date during the Term of this Agreement, Licensee shall furnish Licensor with a certificate of insurance. The certificate shall reference this Agreement. Upon receipt of notice from its insurer, Licensee shall use its best efforts to provide Licensor with thirty (30) days' prior written notice of cancellation or nonrenewal of Licensee's insurance during the Term of this Agreement. All policies shall be written on an occurrence and not on a claims-made basis.

- (b) All contractors and all of their subcontractors who perform work on the Property or Premises on Licensee's behalf shall carry, in full force and effect, substantially the same insurance as that required of Licensee.
- (c) Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

8. INTERFERENCE.

- Licensee's installation, operation, maintenance and use of its Communications (a) Facility under this Agreement shall not damage or adversely interfere in any way with Licensor's Tower operations, its related repair and maintenance activities, or its communications equipment. Licensor, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Tower and to temporarily disrupt Licensee's Communications Facility as may be necessary in order to carry out any such activities. In the event such disruption may be for an extended period of time, Licensor shall permit Licensee to place, at a mutually agreeable location on the Property, temporary transmission and reception facilities at no additional license fee for the duration of the disruption. Licensor will use reasonable efforts to give at least sixty (60) days' advance notice of such activities to Licensee, so that Licensee may promptly remove its communications equipment from the Tower. In the case of an emergency (including instances in which it is not possible, using reasonable efforts, for Licensor to give 60-days' advance notice to Licensee), Licensor shall notify Licensee as soon as reasonably possible. Licensor agrees to reasonably cooperate with Licensee to carry out such activities with a minimum amount of disruption to Licensee's transmission operations.
- (b) Licensee agrees to install only equipment of the type and frequency that will not cause harmful interference measurable in accordance with then existing industry standards to any equipment of Licensor, regardless of when such equipment is installed, or preexisting radio frequency users on the Property, as long as those preexisting radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. In the event any equipment installed by Licensee causes interference to Licensor's communications equipment, regardless of when installed, or causes interference to the then existing equipment of other licensees or lessees on the Property, and after Licensor has

notified Licensee in writing of such interference, Licensee will immediately take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, powering down such equipment and later powering up such equipment for intermittent testing. Licensor agrees that any future licensees or lessees permitted to use the Tower will be permitted to install only such equipment that is of the type and frequency that will not cause harmful interference, which is measurable in accordance with then existing industry standards, to Licensee's then existing equipment. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this section and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

- (c) Licensor makes no warranties or representations regarding Licensee's exclusive use of the Property or noninterference with Licensee's transmission and all such warranties and representations are hereby disclaimed.
- (d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the facilities of any users of the Property.
- 9. <u>LIABILITY</u>. Each Party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations of joint liability, each Party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the Parties' intent to impose liability beyond that imposed by state statutes.
- 10. <u>REPRESENTATIONS</u>. Licensee and Licensor 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 through the person set forth as signatory for the Party below.
- or dispose of any Hazardous Substances (as defined below) on the Property in violation of state or federal law now or hereafter in effect; (ii) that it will not transport any Hazardous Substances to or over the Property in violation of state or federal law now or hereafter in effect; and (iii) that its Communications Facility and any other leasehold improvements do not constitute or contain, nor will they generate any Hazardous Substance in violation of state or federal law now or hereafter in effect. Licensor and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or the handling, use and disposal of Hazardous Substances, as may now or at any time hereafter be in effect, to the extent such apply to that Party's activity conducted in or on the Premises. "Hazardous Substances" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste,

hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments.

12. ACCESS.

- (a) At all times throughout the Term of this Agreement, and at no additional charge to Licensee, Licensee and Licensee's Authorized Representatives will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communications Facility and any utilities serving the Premises, subject to subsections (b) and (c) below. The Easements, as more fully described in Exhibit A, grant to Licensee and Licensee's Authorized Representatives the right of access to Licensee's equipment located on the ground.
- (b) Licensee shall have reasonable access to that part of the Communications Facility located on the Tower only with the approval of Licensor and in the presence of an authorized agent of Licensor. For instances involving access by Licensee for regular maintenance of the Communications Facility, Licensee shall provide Licensor with three (3) working days' notice by calling (608) 873-3379 prior to accessing the Tower. In the event of an emergency requiring immediate access to the Tower, Licensee shall provide Licensor with notice as soon as reasonably possible by calling (608) 873-3379 during business hours and (608) 575-4662 during non-business hours. All routine site maintenance to the Tower will be by foot, with vehicle access only if necessary to the work being performed. With respect to access under this Section 12(b), within thirty (30) days of receipt of an invoice from Licensor, Licensee shall reimburse Licensor for all regular, overtime, holiday, or call-out time paid to Licensor's employees and any other reasonable costs ("Reimbursable Costs") incurred by Licensor (including mileage and overhead costs) in providing Licensee with access to the Tower. Licensor agrees to submit an invoice to Licensee within thirty (30) days of payment to Licensor's employees of any such Reimbursable Costs.
- (c) In the event of an emergency involving the Communications Facility, Licensor shall have the right to summon Licensee to the Premises by calling Licensee at (608) 288-2599. On receiving such call, Licensee shall have its service personnel at the Premises within two (2) hours.
- 13. <u>REMOVAL/RESTORATION</u>. Upon termination or expiration of this Agreement, Licensee shall have ninety (90) days (the "Removal Period") to remove the Communications Facility and all its equipment or leasehold improvements from the Premises, including its foundations, which shall be removed to a depth of 3 feet and 6 inches (3' 6") below grade. Licensee shall restore the Tower and the Premises to the condition they were in on the Effective Date, ordinary wear and tear and loss by casualty or other causes beyond Licensee's control excepted, all at Licensee's sole cost and expense. Before removing any part of its Communications Facility from the Tower upon termination or expiration of this Agreement, Licensee agrees to provide Licensor with thirty (30) days' written notice of its intentions to remove such facilities and agrees to coordinate the removal with Licensor. In the event that

Licensee fails to comply with the removal and restoration requirements of this Agreement, Licensor shall have the right, using its own personnel or a contractor, to perform such removal and restoration, and Licensee agrees to reimburse Licensor for Licensor's actual costs of such removal and restoration. In the event Licensee fails to completely remove its Communications Facility or its other equipment or leasehold improvements from the Premises or fails to restore the Tower and Premises as required during the Removal Period, Licensee shall continue to pay the license fee at the rate in effect during the last month of the Term, prorated for each and every day of every month during which any part of Licensee's Communications Facility, equipment or leasehold improvements remain on the Tower or the Premises. Whether or not any or all of the Communications Facility is in use or functioning shall not be considered a factor when determining Licensee's payment obligations under this Section 13.

14. MAINTENANCE/UTILITIES.

- (a) Licensee will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Licensor will maintain and repair the Property and access thereto, the Tower, and all areas of the Premises where Licensee does not have exclusive control, in good condition, subject to reasonable wear and tear and damage from the elements. During the Term of this Agreement, Licensee shall be responsible for maintenance of any landscaping on the Property installed by Licensee, if any, as a condition of this Agreement.
- (b) Licensor acknowledges that Licensee provides a communications service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If an interruption in electric service is for an extended period of time, Licensee has the right to install and operate a gas-powered backup generator, which shall be housed within Licensee's equipment shelter. Licensor will not be responsible for interference with, interruption of or failure of such services to be furnished or supplied by Licensee.
- (c) Licensee acknowledges that, from time to time, Licensor will paint the Tower. Licensor shall use reasonable efforts to notify Licensee at least thirty (30) days prior to the end of any calendar year during which Licensor has planned and budgeted for Tower painting in the subsequent year, and shall further notify Licensee at least sixty (60) days in advance of the week when the Tower is scheduled to be painted (the "60-day Notice"). The Communications Facility may remain on the Tower during painting. Licensee shall pay the incremental cost of painting the Tower with the Communications Facility in place. Such incremental cost will be determined by obtaining two (2) bids for Tower painting, one (1) bid with the facilities in place and one (1) bid with the facilities removed. Licensee shall be responsible for the difference in the amount of the two (2) bids.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Licensee and a breach of this Agreement: (i) non-payment of the license fee if the fee remains unpaid for more than thirty (30) days after receipt of written notice from Licensor of such failure to pay; or (ii) Licensee's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Licensor specifying the failure. No such failure, however, will be deemed to exist if Licensee 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 Licensee's reasonable control.

- (b) The following will be deemed a default by Licensor and a breach of this Agreement: (i) Licensor's failure to provide access to the Premises within forty-eight (48) hours or (ii) Licensor's failure to perform any other term or condition of this Agreement within forty-five (45) days after receipt of written notice from Licensee specifying the failure. Licensee's remedy for Licensor's failure to provide access timely is the right to terminate the Agreement. No failure under subparagraph (ii), however, will be deemed to exist if Licensor 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 Licensor's reasonable control.
- (c) In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement upon thirty (30) days' written notice to the other Party, and/or pursue any remedy now or hereafter available to the non-defaulting Party under law or equity; provided, however, that the non-defaulting Party shall use reasonable efforts to mitigate its damages in connection with a default by the defaulting Party. Notice of the non-defaulting Party's exercise of its right to terminate shall be given to the other Party in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by the non-defaulting Party. All amounts paid to the termination date shall be retained by Licensor, and Licensee shall immediately pay to Licensor all sums due through the termination date.
- 16. <u>ASSIGNMENT</u>. Licensee may not assign or transfer it rights in this Agreement without Licensor's prior written consent, which consent may be withheld for any reason. No assignment or transfer under this Agreement shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all of Licensee's obligations arising under this Agreement.
- 17. <u>NOTICES</u>. All notices, requests, demands and communications 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. Notice will be addressed to the Parties as follows:

If to Licensee:

DaneCom Radio System Administrator

City-County Building Room 109 210 Martin Luther King Jr Blvd Madison, WI 53703-3342

If to Licensor:

Stoughton Utilities Attn: Utilities Director 600 S. 4th Street Stoughton, WI 53589 Either Party may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other.

- 18. CASUALTY. Licensor will provide notice to Licensee of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Tower or Property is damaged by casualty or other harm as to render the Premises unsuitable for the Permitted Uses, then Licensee may terminate this Agreement by providing written notice to Licensor, which termination will be effective as of the date of such casualty or other harm.
- 19 <u>UTILITIES</u>. Licensee shall pay and be responsible for all utility services it uses on the Premises, which services shall be separately metered. Installation and location of utility lines shall be approved in writing by Licensor prior to their installation. All utilities shall be buried.
- 20. <u>REIMBURSEMENT OF COSTS</u>. Licensee shall reimburse Licensor for any and all engineering, legal, and related expenses Licensor incurs associated with this Agreement up to the amount of Twenty Thousand Dollars (\$20,000.00) ("Reimbursement Amount"). Licensee shall pay the Reimbursement Amount to Licensor upon execution of this Agreement. Any part of the Reimbursement Amount that remains unused after such expenses have been paid in full shall be promptly refunded to Licensee. Licensor shall provide Licensee with invoices supporting its use of the Reimbursement Amount.

21. MISCELLANEOUS.

- (a) Amendment/Waiver. This Agreement cannot be amended, modified or revised unless done in writing and signed by Licensor and Licensee. No provision may be waived except in a writing signed by both Parties. The failure by a Party to enforce any provision of this Agreement or to require performance by the other Party will not be construed to be a waiver or in any way affect the right of either Party to enforce such provision thereafter.
- (b) Recording of License. This Agreement will be recorded, at Licensee's expense, at the office of the Dane County Register of Deeds within sixty (60) days of the Effective Date.
- (c) Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement of the Parties and supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.
- (d) Governing Law. This Agreement will be governed by the laws of the state of Wisconsin, without regard to conflicts of law.
- (e) Severability. If any provision of this Agreement is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(f) No Nuisances. Licensee shall not perform any acts or carry on any practices upon the Premises or the Property which may endanger or injure the Premises or the Property, or surrounding area or any person or be a nuisance or menace to adjoining property owners. Licensee shall keep the Premises and Property free and clear of debris, rubbish, junk and garbage.

[SIGNATURE PAGES FOLLOW]

EXHIBIT A

LEGAL DESCRIPTIONS

The Property is described as follows:

Commencing in the northeast quarter of section nine at a point therein forty rods south of the intersection of the center line of the highway running east and west on the line between sections four and nine with the center line of the highway leading north and south on the west line of lands owned by Albert Asleson, the starting point being at the southeast corner of lands heretofore deeded to A. E. Winger; thence west along the south line of said Winger's land approximately forty-eight rods and to the east line of lands owned by Ole Holtan; thence south approximately one hundred and twenty rods to the center of the highway running east and west on the center section nine; thence east along the center of said highway approximately twenty rods and to the southwest corner of lands heretofore deeded to Fred Blunk; thence north approximately forty rods to the northwest corner of said Blunk's land; thence east to the center of the highway and to a point directly south of the place of beginning; thence north approximately eighty rods to the place of beginning; and all in the northeast quarter of section number nine, town five north, range eleven east, Dane County, Wisconsin.

The ground space portion of the Premises is described as follows:

A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section Nine (9), Township Five (5) North, Range Eleven (11) East, City of Stoughton, Dane County, Wisconsin containing 1,250 square feet (0.029 acres) of land and being described by:

Commencing at the Northwest Corner of said Section 9; thence N89°-36'-17"E 1259.54 feet along the north line of the NW1/4 of said Section 9; thence S00°-23'-43"E 800.04 feet to the point of beginning; thence S00°-00'-00"E 25.00 feet; thence S90°-00'-00"W 50.00 feet; thence N00°-00'-00"W 25.00 feet; thence N90°-00'-00"E 50.00 feet to the point of beginning; being subject to any and all easements and restrictions of record.

The Easements are described as follows:

15' WIDE ACCESS EASEMENT - DANE COUNTY

A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section Nine (9), Township Five (5) North, Range Eleven (11) East, City of Stoughton, Dane County, Wisconsin containing 2,169 square feet (0.050 acres) of land and being 7.5 feet each side of and parallel to the following described line:

Commencing at the Northwest Corner of said Section 9; thence N89°-36'-17"E 1259.54 feet along the north line of the NW1/4 of said Section 9; thence S00°-23'-43"E 800.04 feet; thence S90°-00'-00"W 50.00 feet; thence N00°-00'-00"W 0.50 feet to the point of beginning; thence N90°-00'-00"E 36.83 feet; thence N00°-00'-00"W 90.53 feet; thence N81°-15'-37"E 54.03 feet to a point on the west line of

Racetrack Road and the point of termination. The side lot lines of said easement are to be shortened or lengthened to terminate on said west line.

12' WIDE ELECTRIC EASEMENT – DANE COUNTY

A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section Nine (9), Township Five (5) North, Range Eleven (11) East, City of Stoughton, Dane County, Wisconsin containing 812 square feet (0.019 acres) of land and being Six (6) feet each side of and parallel to the following described line:

Commencing at the Northwest Corner of said Section 9; thence N89°-36'-17"E 1259.54 feet along the north line of the NW1/4 of said Section 9; thence S00°-23'-43"E 800.04 feet; thence S00°-00'-00"E 13.58 feet to the point of beginning; thence S39°-20'-10"E 42.99 feet; thence S33°-30'-42"E 24.63 feet to a point on the west line of Racetrack Road and the point of termination. The side lot lines of said easement are to be shortened or lengthened to terminate on said west line.

12' WIDE GAS EASEMENT - DANE COUNTY

A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section Nine (9), Township Five (5) North, Range Eleven (11) East, City of Stoughton, Dane County, Wisconsin containing 488 square feet (0.011 acres) of land and being Six (6) feet each side of and parallel to the following described line:

Commencing at the Northwest Corner of said Section 9; thence N89°-36'-17"E 1259.54 feet along the north line of the NW1/4 of said Section 9; thence S00°-23'-43"E 800.04 feet; thence S00°-00'-00"E 23.84 feet to the point of beginning; thence N90°-00'-00"E 40.69 feet to a point on the west line of Racetrack Road and the point of termination. The side lot lines of said easement are to be shortened or lengthened to terminate on said west line.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the last date written below.

		"LIC	ENSOR"
		City o	of Stoughton, Wisconsin
		By: Its: Date:	Donna Olson Mayor 11-19-15
		City o	f Stoughton Utilities
*		By: Its: Date:	Robert P. Kardasz Utilities Director //-/9-/5
STATE OF WISCONSIN)) ss:		
COUNTY OF DANE)		
named Donna Olson, Mayor,	City of Stoughton and ity and known by me t	Robert 1	Mben, 2015, the above P. Kardasz, Stoughton Utilities persons who executed the foregoing
Tunn.	NOTARY	14-10-1-10-10-10-10-10-10-10-10-10-10-10-1	Public, State of Wisconsin ume: Lawa C Kropf
<u> </u>	No.	Print Na	me: LUI LU CELODE

My Commission Expires:

County of Dane, Wisconsin

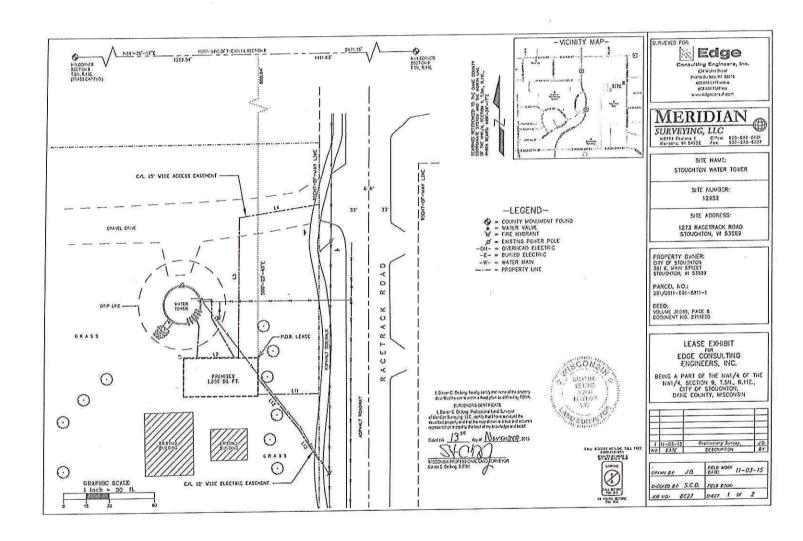
"LICENSEE"

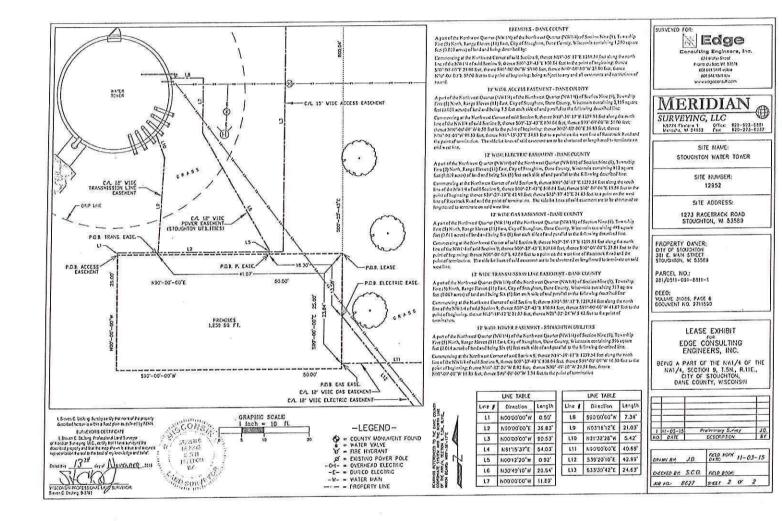
		By: Its: Date:	Joseph Parisi Executive
STATE OF WISCONSIN COUNTY OF DANE)) ss:)		
	Executive, acting in said	capacit	, 2015, the above named y and known by me to be the person he same.
	P	rint Na	Public, State of Wisconsin me: nmission Expires:

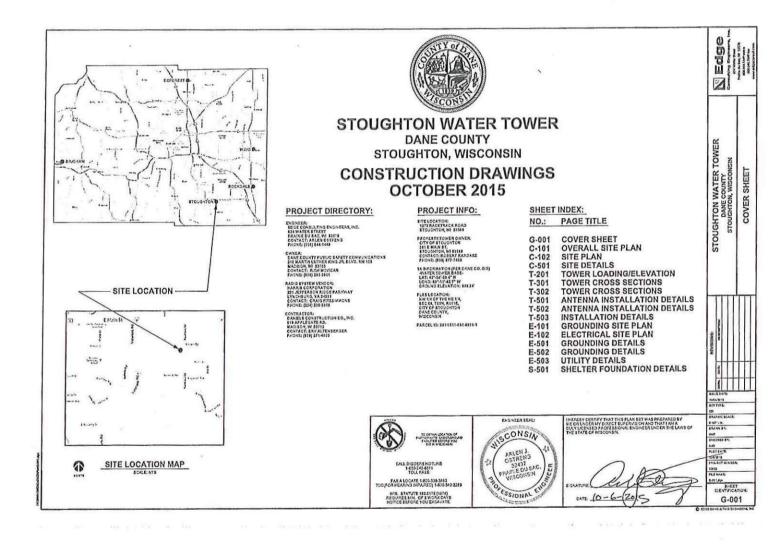
EXHIBIT B

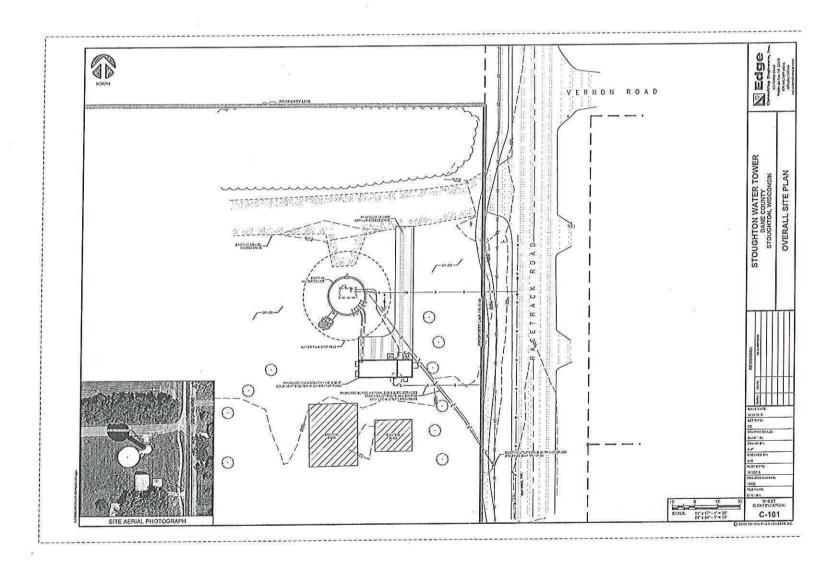
CONSTRUCTION PLANS AND DESCRIPTION/DEPICTION OF THE PREMISES AND EASEMENTS

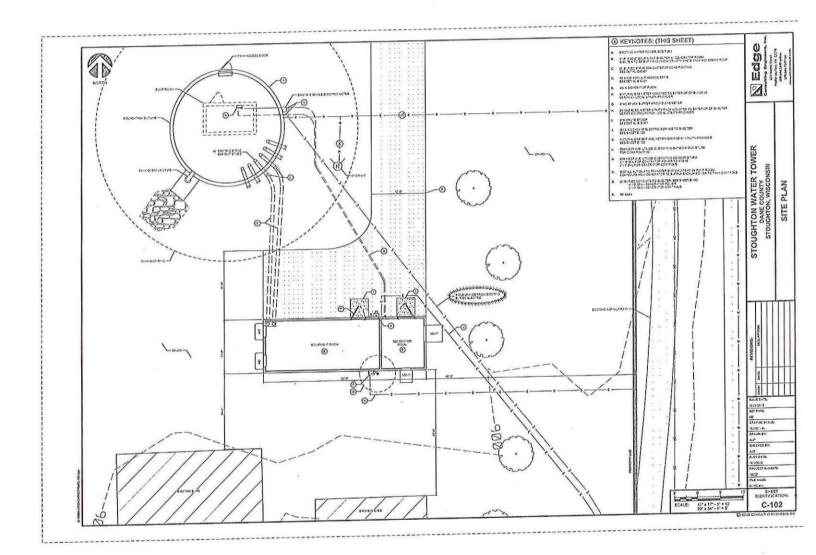
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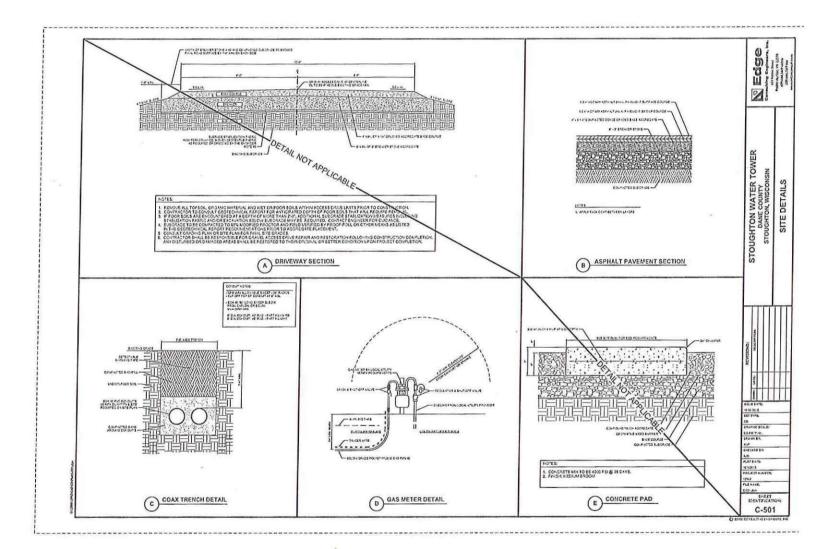


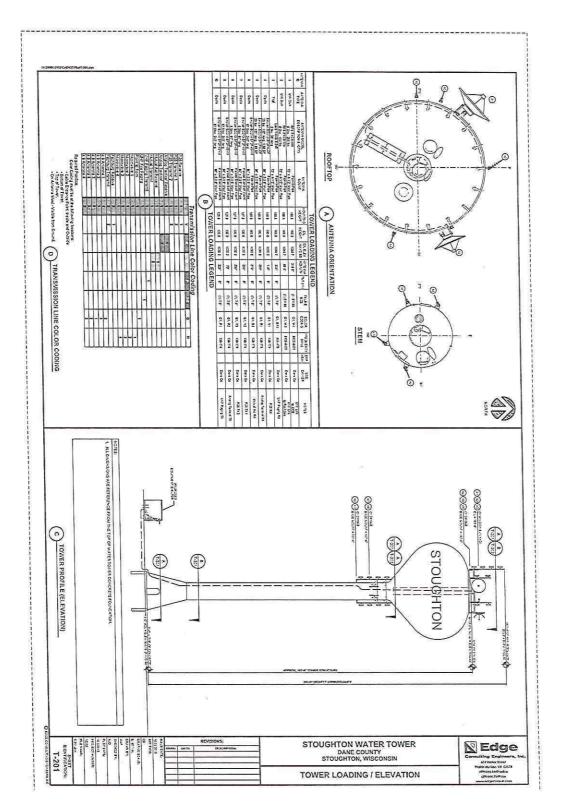


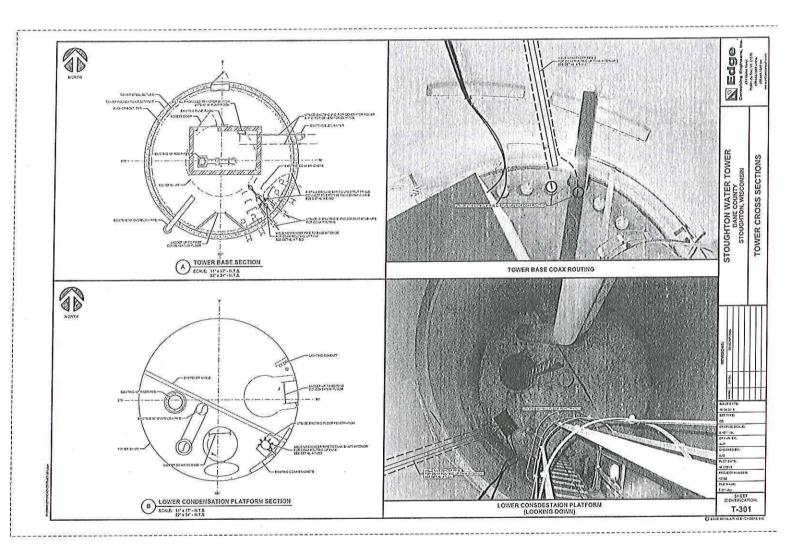


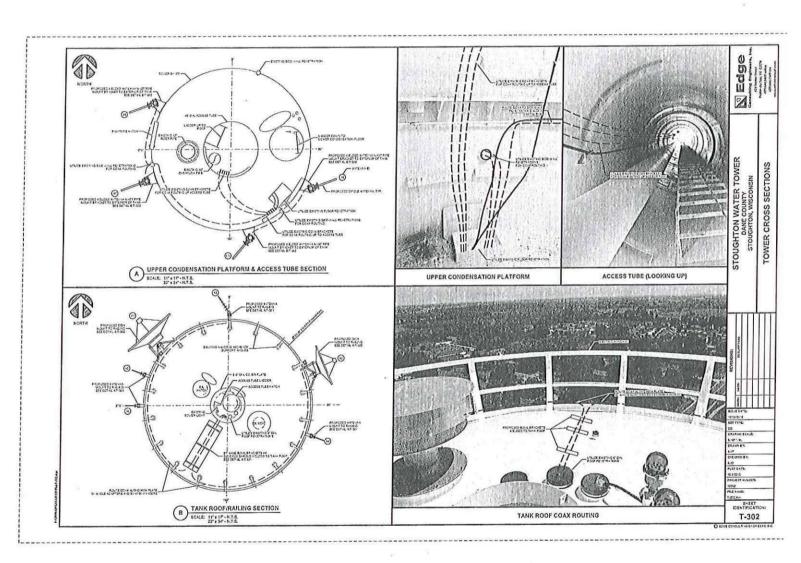


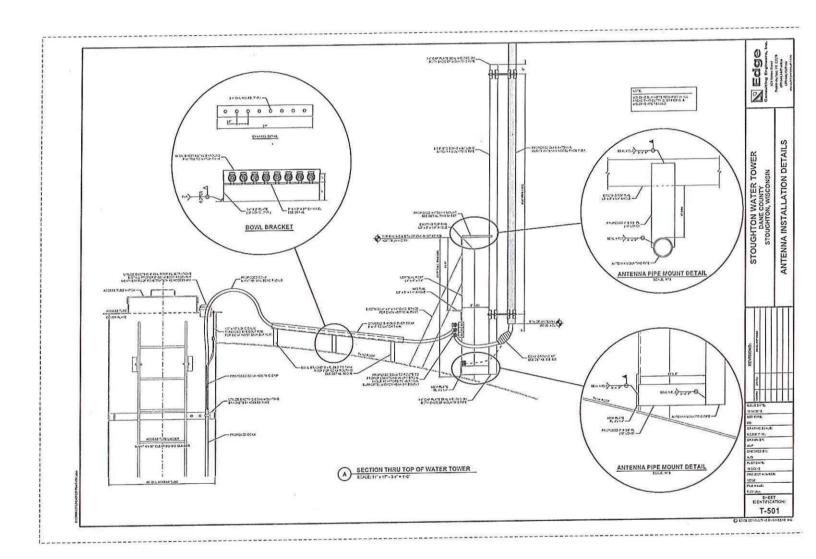


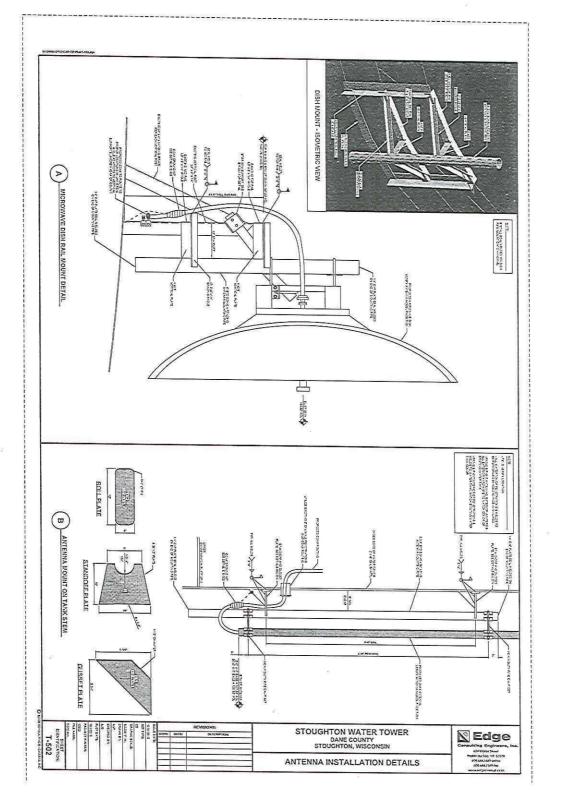








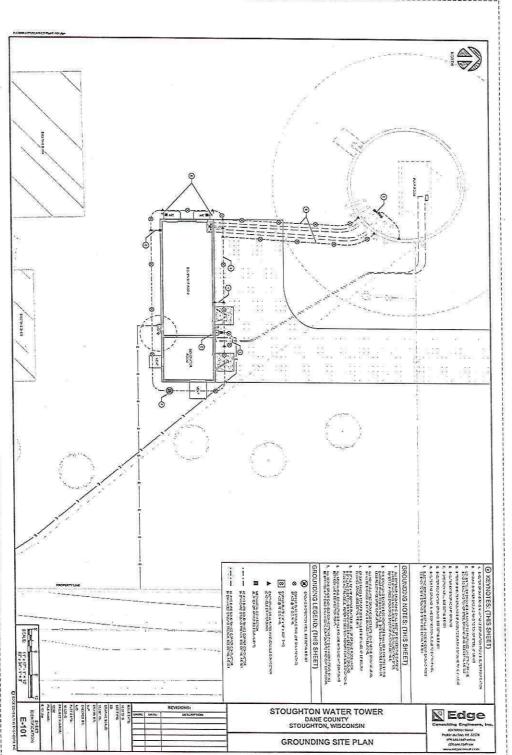


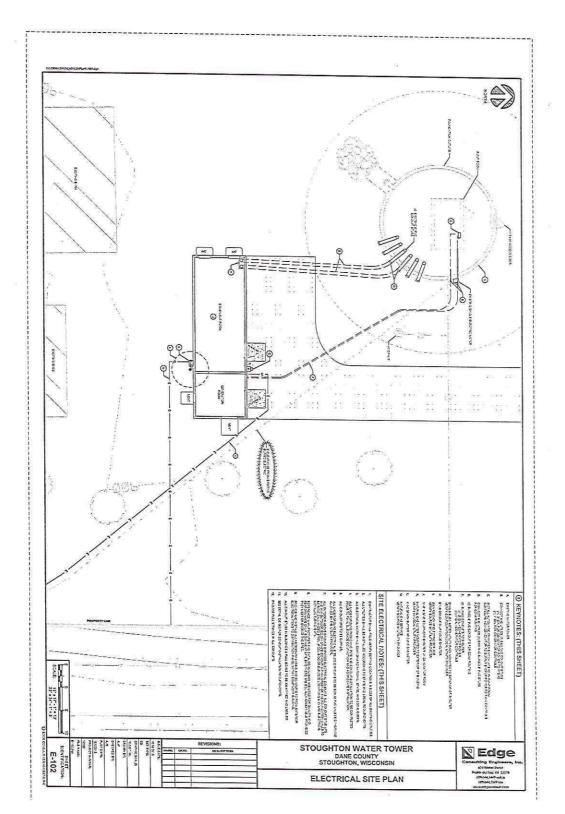


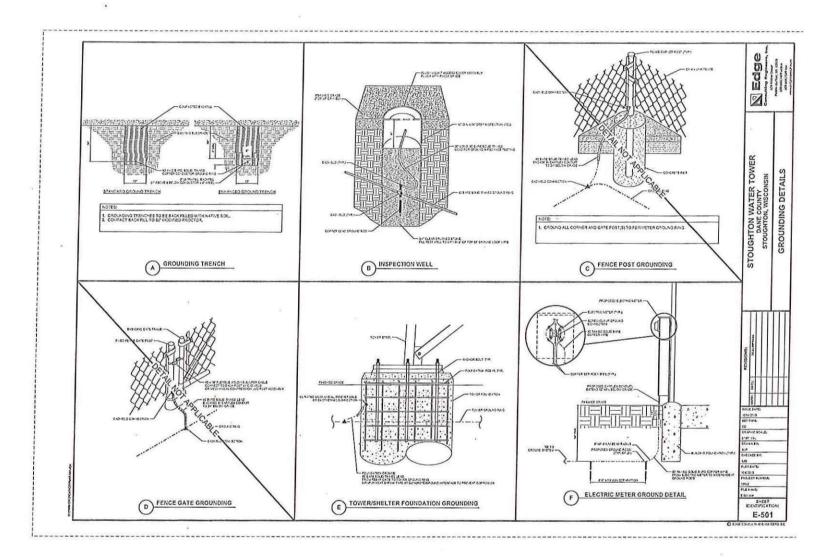
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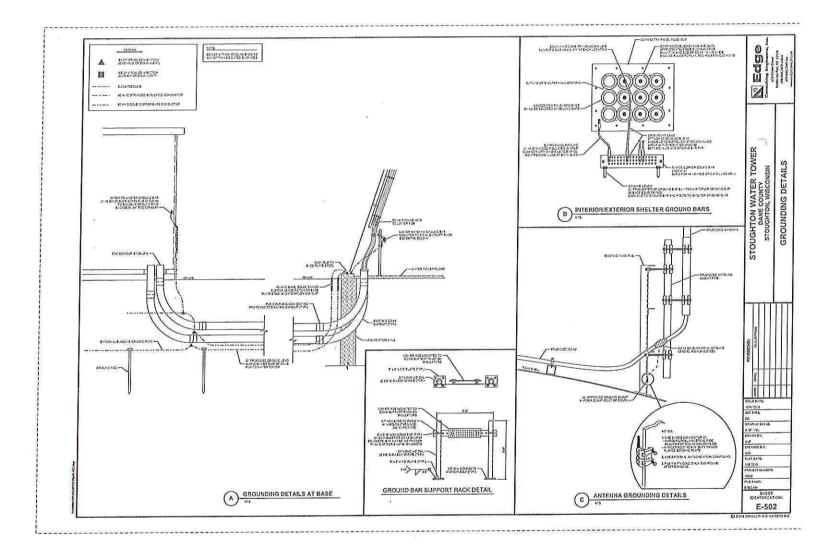
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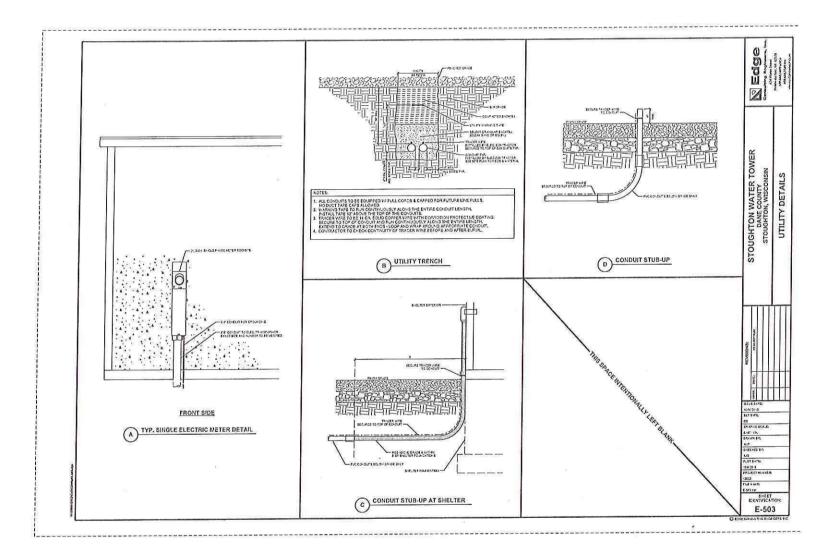
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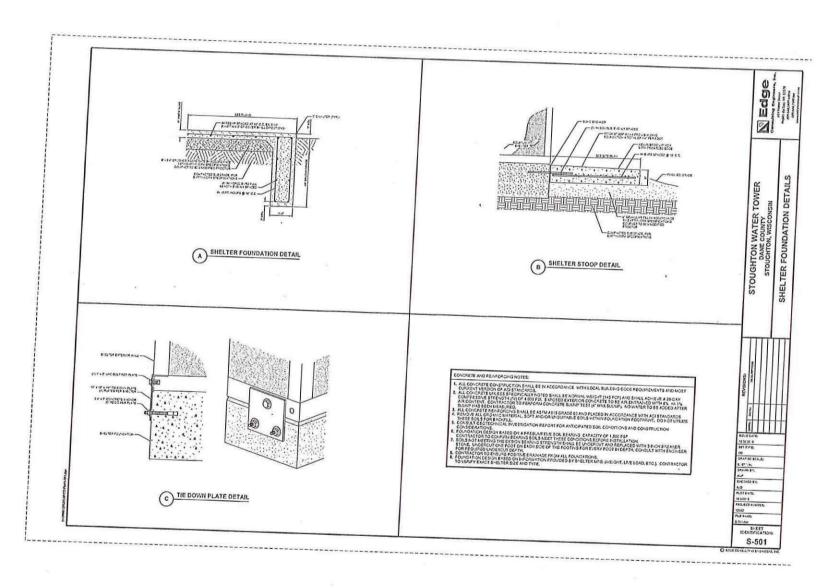


EXHIBIT C

AS BUILT DRAWINGS [TO BE ATTACHED, AS REQUIRED IN SECTION 4]