

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

9/28/10

SUBJECT:

Pole Attachment License Agreement for Arvig Enterprises, Inc.

PREPARED BY:

Randy Anderton , Manager of Engineering

ITEM DESCRIPTION:

RPU recently received a request from Arvig Enterprises, Inc. to establish a pole attachment agreement between Arvig Enterprises, Inc. and RPU. Arvig Enterprises intends to install a large amount of overhead and underground fiber optic communications cable in Rochester and is requesting to attach the overhead cable to RPU poles.

On December 31, 2009 the statistics regarding communications attachments on RPU poles from all of the existing communications companies were as follows:

Total number of poles in the RPU system	12,890
*Total number of pole attachments *(some poles have multiple attachments)	10,153
Total annual revenue from all attachments	\$181,904

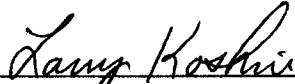
Arvig Enterprises plans to install fiber communication attachments to approximately 603 RPU poles. The estimated annual pole attachment revenue from Arvig Enterprises will be approximately \$10,000/yr. The request letter from Arvig along with their route maps have been included with this FBA.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board request the Common Council to approve the Pole Attachment License Agreement with Arvig Enterprises, Inc., and authorize the Mayor and City Clerk to execute the Agreement.


General Manager


Date

ROCHESTER PUBLIC UTILITIES



Arvig Communication Systems

150 Second Street SW, Perham, MN 56573-1408 • 218-346-5500

September 3, 2010

Michael Engle
Rochester Public Utilities
4000 East Rive Road NE
Rochester, MN 55906-2813

Dear Mr. Engle:

Arvig Enterprises, Inc d.b.a. Arvig Communication Systems (ACS) is in the process of planning and implementing the construction of and owning a fiber optic communication system within the City Limits of Rochester, MN.

The Construction Corridor consists of Buried sections and Aerial Sections.

Arvig Enterprises, Inc. is requesting to enter into a Pole Attachment Agreement, between Arvig Enterprises, Inc. and Rochester Public Utilities which authorizes Arvig Enterprises, Inc. to attach a communication facility to Rochester Public Utilities power poles.

Please provide Arvig Enterprises, Inc. with all the necessary applications and forms for Arvig Enterprises, Inc. to agree to, sign, and start the Pole Attachment Agreement process. Please also accept signatures from Andrew Klinnert, Director of Network Operations, for future approvals needed from Arvig Enterprises, Inc.

If you have any questions, feel free to contact my office 218-346-8107 or email david.schornack@arvig.com.

Sincerely,

A handwritten signature in black ink that reads "David Schornack". The signature is fluid and cursive, written over a white background.

Dave Schornack
Director of Sales and Business Development
Arvig Communication Systems

**ROCHESTER PUBLIC UTILITIES
POLE ATTACHMENT LICENSE AGREEMENT
FOR ARVIG COMMUNICATION SYSTEMS**

THIS AGREEMENT made and entered into the 4th day of October, 2010, by and between the City of Rochester, a Minnesota municipal corporation, acting through its Rochester Public Utilities Board, with its principal place of business in Rochester, MN, County of Olmsted, State of Minnesota, (hereinafter called "Licensor"), and Arvig Enterprises, Inc., with its principal place of business address at 150 Second Street SW, Perham, MN 56573-1408
(hereinafter called "Licensee")

WITNESSETH:

WHEREAS, Licensor owns, operates and maintains lines of poles extending in Olmsted, County, and

WHEREAS, Licensee desires to place certain lines, attachments and apparatus on certain poles of Licensor, for the limited purpose of furnishing [telecommunications or cable television service] in compliance with any and all local, state or federal regulations; provided, that such lines, attachments and apparatus does not interfere with the utility purposes or other purposes of Licensor or interfere with the furnishing of electrical service to consumers of Licensor, and where in its judgment, safety will not be adversely affected.

WHEREAS, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, attachments, and apparatus on said poles of the Rochester Public Utilities 13.8kV distribution system in the Rochester Public Utilities service territory area set forth below:

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. DEFINITIONS

- A. For the purpose of this agreement, the phrase "joint use pole" shall mean a pole conforming to the latest specifications of the American Standards Association.
- B. A "pole contact" is defined as any lines, attachments and apparatus by Licensee, to the poles of Licensor.

2. SPECIFICATIONS

- A. The joint use poles covered by this agreement shall be placed and maintained in accordance with the most stringent requirements, specifications, rules, and regulation of the latest edition of the National Electrical Safety Code (NESC), the

Occupational Safety and Health Act (OSHA), any governing authority having jurisdiction, and the rules and practices of Licensor as set forth in Exhibit "B".

- B. It is understood and agreed between the parties that the rules and practices set out in Exhibit "B" may be changed by Licensor, or new rules and practices may be adopted by Licensor, without resort to the provisions of Section 15, relating to supplementing or amending this agreement, and Licensee agrees to be bound by any such change or adoption.
- C. In the event that Licensor should change or adopt a rule or practice, or rules and practices, for the joint use of poles by Licensee, Licensor shall give Licensee written notice of such change or adoption in the manner contemplated by Section 18 and Licensee agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations within thirty (30) days after receipt. Such period will be extended as reasonably necessary to permit Licensee to make said required changes or alterations so long as Licensee commences said changes or alterations within such thirty (30) day period and thereafter continuously and diligently pursues and completes such changes or alterations.
- D. Every new attachment of the License installed under this contract shall be tagged or marked with a non-metallic tag acceptable to the Licensor. Any tag, brand, or other device showing Licensee's name or insignia shall show Licensee to be the Licensee or lessee of such pole and not the owner thereof.
- E. The strength of poles covered by this Agreement shall be sufficient to withstand the transverse and vertical loads imposed upon them under the storm loadings of the National Electrical Safety Code assumed for the area in which they are located. 90 MPH wind loading shall be used as a criteria.
- F. Any unbalanced loading of Licensor's poles caused by the placement of Licensee's lines, attachment and apparatus shall be properly guyed and anchored by Licensee, at no expense to Licensor.

3. ESTABLISHING JOINT USE OF POLES

- A. Before the Licensee shall make use of any of the Licensor's poles under this Agreement, it shall request permission in writing on the application form attached and identified as Exhibit C, and shall comply with the procedures set forth in this section.

- B. If, in the judgment of the Licensor, joint use under the circumstances is undesirable, the Licensor shall have the right to reject the application. In any event, within sixty (60) days after the receipt of such application the Licensor shall notify the Licensee in writing whether the application is approved or rejected.
- C. After receipt of notice from the Licensor regarding the approved application, the Licensee shall furnish the Licensor detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Licensor to be used jointly, the number and character of the attachments to be placed on such poles, any rearrangement of the Licensor's fixtures and equipment necessary for joint use, and relocations or replacements of existing poles, and any additional poles which may be required. The Licensor shall, on the basis of such detailed construction plans and drawings, submit to the Licensee within sixty (60) days a cost estimate (based on Licensor's method of computing costs) for all changes which may be required in each such pole line, including an estimated completion date for such changes. Upon written notice by the Licensee to the Licensor of the acceptability of the referenced cost estimate, the Licensor shall make every effort to complete this work at a mutually agreed upon completion date. Nothing shall preclude the parties from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary changes. Upon completion of all changes, the Licensee shall have the right to use the poles jointly and to make attachments in accordance with the terms of the application and of this Agreement. The Licensee shall, at its own expense, make attachments in such manner as not to interfere with the service of the Licensor, and shall place guys and anchors to sustain any unbalanced loads caused by its attachments.
- D. Upon completion of all changes in each pole line to be used jointly, the Licensee shall pay to the Licensor the cost of making such changes. The obligations of the Licensee shall not be limited to amounts shown on estimates made by the Licensor. Costs include materials, labor, engineering, supervision, overheads, and tree trimming. The value of salvaged materials will be credited against the cost. (The Licensee shall provide primary engineering including design, proper conductor spacing and bonding, and calculations to determine proper ground clearance and pole and down guy strength requirements for horizontal and transverse loading.) An itemized statement of the actual costs of all such changes shall be submitted by the Licensor to the Licensee. Costs will be billed using the Licensor's Standard Fee Schedule, which will be sent to the Licensee no less frequently than annually during the life of this contract.
- E. Any re-clearing of existing right-of-way, and any tree trimming necessary for the establishment of joint use, shall be performed by the parties as may be mutually agreed.

- F. All poles jointly used under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles.
- G. The Licensor reserves the right to exclude any of its facilities from joint use.

4. EASEMENTS AND RIGHT-OF-WAY FOR LICENSEE'S ATTACHMENTS

The Licensor does not warrant or assure to the Licensee any right-of-way privilege or easement; and if the Licensee shall at any time be prevented from placing or maintaining its attachment on the Licensor's poles, no liability shall attach to the Licensor. Each party shall be responsible for obtaining its own easements and right-of-way.

5. MAINTENANCE OF POLES, ATTACHMENTS AND RIGHT-OF-WAY

- A. The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications mentioned in Section 2, and shall replace, reinforce or repair such poles as are determined to be defective.
- B. Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.
- C. Whenever it is necessary to replace or relocate a jointly used pole, the Licensor shall, before making such replacement or relocation, give ten (10) days notice in writing when possible (except in cases of emergency or less than ten (10) days notice to the Licensor, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall, at the time so specified, transfer its attachments to the new or relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost. In the event the Licensee fails to transfer its attachments and Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities which may result.
- D. Except as otherwise provided in (C) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in thorough repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be performed by the parties as may be mutually agreed upon, and the cost shall be borne by the parties as provided in Section 3(E).
- E. The Licensor regularly inspects the poles installed on the system. Reject or danger poles identified during these inspections are tagged immediately upon

discovery and repaired or replaced in a timely manner by Licensor at Licensor's cost. Currently tagging standards in use for the Licensor's poles are available for use by the Licensee upon request.

- F. Licensee expressly assumes responsibility for determining the condition of all poles to be accessed by its employees, contractors, or employees or contractors. No poles shall be climbed by Licensee without prior approval from Licensor, unless such poles cannot be accessed by bucket truck or ladder. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that has become unserviceable.

6. RECOVERY, REARRANGING OR RELOCATION OF FACILITIES

- A. The reasonable costs for any modification, rearrangement, relocation or removal necessary to allow Licensee to make or maintain the desired attachment shall be allocated to Licensee, Licensor, or other entities on the following basis:
 - (1) If the modification, rearrangement, relocation or removal of Licensee's facilities is the result of an additional attachment or the modification of an existing attachment sought solely by an entity other than Licensor or Licensee, the entity requesting the additional or modified attachment shall bear the entire cost of modification, rearrangement, relocation or removal of Licensee's facilities.
 - (2) If the modification, rearrangement, relocation or removal is requested solely by Licensee, Licensee shall bear the cost of such rearrangement. Licensee shall pay 100% of the estimated cost of any modifications to Licensor prior to Licensor performing such modifications. The modification shall be scheduled upon receipt of this payment. Any cost above the estimated cost shall be reimbursed to Licensor within thirty (30) days of completion of such modifications. Licensee shall be refunded the difference between the actual cost of the modification and the estimated cost of the modification if such actual cost is less than the estimated cost. Licensee will receive said refund from Licensor within thirty (30) days of the completion of the modifications.
- B. Licensee agrees that Licensor has the right to reserve space on its poles for Licensor's core utility space. Should Licensor, at any time, require any space reserved by a development plan but occupied by Licensee's attachments, Licensor shall give, except in the case of an emergency, sixty (60) days notice to Licensee and Licensee shall either vacate the space by removing its attachments or authorize Licensor to modify said poles at the expense of Licensee and other parties participating.

- C. In the event it is necessary for Licensor to use the space on poles occupied, or contracted for, by the Licensee, the Licensee shall, upon receipt of thirty (30) days written notice, either vacate the space by the removal of its attachments, or shall authorize Licensor to replace the poles at the expense of Licensee, and the Licensee shall pay the total costs incurred by Licensor in rearranging such facilities, provided, however, that Licensee has not paid for the replacement of such poles.

7. INDEMNIFICATION

Except for the negligence or willful acts or omissions of Licensor, Licensee shall indemnify, protect, save harmless and insure Licensor from and against any all claims and demands for damages to property, and for injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the erection, maintenance, presence, use, rearrangement or removal of the attachments of Licensee's equipment to Licensor's poles or by the proximity of the Licensee's cables, wires, apparatus and appliances to those of Licensor or by any act of Licensee, its agents and employees on or in the vicinity of Licensor's poles. Licensee shall carry insurance in such form and in such companies as are satisfactory to Licensor to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage.

The Licensee shall take out and maintain throughout the period during which this Agreement shall remain in effect, insurance conforming with the requirements listed below. The Licensee shall furnish to the Licensor a certificate evidencing compliance with the above requirements. This certificate will list Licensor as additional insured and will note specific cancellation language, as follows: "In the event of cancellation of any of the said policies, the insuring company shall give the party to whom this certificate is issued fifteen (15) days' prior notice of such cancellation.

- A. A thirty (30) day notice of cancellation and/or non-renewal.
- B. Statutory Workers Compensation insurance including occupational disease coverage. Employer's liability insurance with limits of not less than Five Hundred Thousand Dollars (\$500,000) per person.
- C. A comprehensive general liability policy with a Combined Single Limit (CSL) of Two Million Dollars (\$2,000,000) bodily injury and property damage liability policy. The Board Form Endorsement covering:
 - (1) Contractual Liability
 - (2) Broad Form Property Damage
 - (3) Personal Injury

- D. A One Million Dollar (\$1,000,000) umbrella policy to cover the excess above the underlying policies requested in this insurance section.
- E. A comprehensive automobile liability policy with a Combined Single Limit of Five Hundred Thousand Dollars (\$500,000) bodily injury and property damage liability coverage, including hired and non-owned automobiles.

8. ABANDONMENT OF JOINT USE POLES

- A. If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole, unless specifically accepted by written special agreement. Licensee shall be responsible for removal and relocation of its attachments from such pole(s), and all costs associated with removal and relocation, within said thirty (30) day time period or shall be responsible for all costs incurred by Licensor associated with removal of Licensee's attachments.
- B. Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing of such abandonment, as provided in Section 18, and removing from such pole all attachments that Licensee may have, and in case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

9. RENTALS, CHARGES AND RATES

- A. On or about December 1st of each year, the parties, acting in cooperation, shall tabulate the total number of existing joint poles and the total number and type of attachments as of the preceding day. This tabulation shall indicate the number of attachments on which rentals are to be paid. The rentals shall be computed in accordance with Exhibit A on the basis of the appropriate charge per annum for each attachment to a jointly used pole, and the appropriate charge per annum for each anchor of Licensor that Licensee attaches to, and shall be effective pursuant to Section 13 hereof.
- B. The initial rental period will be from October 5, 2010 through December 31, 2011. Thereafter, the yearly rental period covered by this agreement shall be the twelve month period between January 1 and December 31. Rental payable for each such rental period during the continuance of this agreement shall be paid in one (1) annual installment. The annual rental per attachment shall apply to any attachments made or removed during the year and rents shall not be prorated.
- C. In the event that Licensee requires a source of electrical energy for power supply to Licensee's system which constitutes a part of the licensed attachments and

apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

- D. All other amounts payable under this agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within thirty (30) days of billing by Licensor.

10. DEFAULTS

- A. If Licensee shall fail to comply with any of the provisions of this agreement or should default in any of its obligations under this agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.
- B. If Licensee shall default in the performance of any work which it is obligated to do under this agreement, the Licensor may elect to do such work, and the Licensee shall reimburse the Licensor for the cost of the work which shall be billed at the Licensor's Fee Schedule.
- C. If the Licensee shall default in any of its obligations under this Agreement and it becomes necessary for the Licensor or Licensee to obtain the services of an attorney, who is not a salaried employee of the Licensor, to enforce such obligations, the Licensee agrees to pay any and all attorney fees, court costs and other costs of litigation associated with the enforcement of such obligations. The non prevailing party shall be obligated to pay the attorney fees hereunder.

11. UNAUTHORIZED ATTACHMENT

- A. If any of Licensee's facilities for which no license has been issued shall be found attached to Licensor's poles, Licensor may assess a Fifty Dollar (\$50.00) Unauthorized Use Fee for each unauthorized Licensee attachment to Licensor's facilities, and without prejudice to its other rights or remedies under this Agreement, including termination, require Licensee to submit, within fifteen (15) days after the date of written or oral notification from Licensor of the unauthorized attachment, a pole attachment license application. If such application is not received by Licensor within the specified time period, Licensee shall immediately remove its unauthorized attachment, or, at its own risk, Licensor may remove such Licensee facilities, and the expense of such removal shall be borne by Licensee.
- B. No act or failure to act by Licensor with regard to said unauthorized attachment shall be deemed as a ratification or the licensing of the unauthorized attachment.

If any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception in regard to said unauthorized attachment.

- C. An attachment that was not inventoried through error or omission shall not be considered an unauthorized attachment. Any such existing attachments, when discovered, shall be added to the count and billed at the appropriate rate during the next billing cycle with no additional fee for unauthorized attachment added. An example of an unauthorized attachment is any attachment placed by an entity who does not have a previously executed pole attachment license agreement. Another example of an unauthorized attachment would be a licensee who repeatedly does not notify the licensor of additional attachments made to the licensor's poles or changes to existing attachments that increase the weight or diameter of the existing attachments (overlashing) including additional equipment attachments. "Repeatedly not notifying" is defined to be failing to notify the licensor three times during the existing term of the agreement.

12. RIGHTS OF OTHER PARTIES

Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this agreement, rights or privileges to use the joint use poles covered by this agreement.

13. TERMS OF AGREEMENT

This agreement shall continue in force and effect until December 31, 2011, and thereafter from year to year unless terminated by either party by giving written notice of its intention so to do not less than sixty (60) days prior to the end of any period, provided, however, if the Licensee shall fail to commence construction on the poles of Licensor within the period of one hundred eighty (180) days after the date of execution of this License Agreement, then this License Agreement shall be null and void, and of no further force and effect. Upon termination of this agreement, Licensee shall remove its attachments from the poles of Licensor within one hundred eighty (180) days after the effective date of such termination. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost. Should this agreement renew for an additional year, the Licensor shall have the right to increase or update its fees upon sixty (60) days written notice to the Licensee.

14. WAIVER OF TERMS AND CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such

terms and conditions, but such conditions and terms shall be and remain at all times in full force and effect.

15. SUPPLEMENTAL AGREEMENTS

- A. This agreement may be amended or supplemented at any time upon written agreement by the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- B. In the event that Licensee desires to add or reduce the number of pole attachments, Section 15(A) shall not apply, but in each case a sketch, map, engineer design and/or other mutually acceptable notice shall be submitted to Licensor, setting out in detail the pole numbers and exact locations of the poles, and the quantity of poles involved in the addition or subtraction.

16. PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

17. INTEREST AND PAYMENTS

All amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable by the due date. Any payment not made by the due date shall bear interest at the lesser of Licensor's current rate of interest per annum or the rate of interest per annum equal to the interest rate then being quoted by Chase Manhattan Bank (or its Successor) as its prime rate plus two (2) points, until paid.

18. NOTICES

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this agreement, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the office of Licensor in the case of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States mail and properly addressed to the party to be served as follows:

If notice is to Licensor: Rochester Public Utilities
 4000 East River Road NE
 Rochester, MN 55906-2813
 Attn: Engineering Manager

If notice is to Licensee: Arvig Enterprises, Inc.
 150 Second St SW
 Perham, MN 56573-1408
 Attn: David Schornack

19. SUPPLYING INFORMATION

- A. For Proposed Attachments, it is understood and agreed to between the parties that Licensee shall furnish to Licensor, with the execution of this agreement, a detailed sketch or map upon which will be shown the precise locations by streets or roads of the joint use poles covered by this agreement, showing the facilities installed upon the joint use poles. Such sketch or map shall be reviewed by, and approved, commented upon, or rejected by the engineers or assigns of Licensor, and Licensee agrees to make any and all such changes in said sketch or map as are suggested by said engineers or assigns.
- B. For Existing Attachments, after the completion of the initial installation of the facilities, as set forth on the above mentioned sketch or map, Licensee shall furnish to Licensor a revised copy of said sketch or map showing the precise location of each power supply, pole contact, and other attachment of Licensee which is actually installed on poles of the Licensor. Such revised sketch or map shall be verified by the Licensor and shall be the basis for determining the number of pole contacts made initially.
- C. For Changes in Existing Attachments, Licensee shall promptly report to Licensor any changes made in the number of poles of the Licensor contacted by Licensee.
- D. Upon request of Licensor or as may be mutually agreed upon, the parties shall make a joint field check to verify the accuracy of contact records. If, as a result of any such joint field check, it is found that the Licensee is occupying any poles of the Licensor without having advised the Licensor as provided in Section 16, the Licensee shall pay to the Licensor the rental for such poles from the date that Licensee's attachments were installed on such poles, or if dates of installation cannot be determined to the satisfaction of both parties, the installations shall be presumed to have occurred at the same rate as those reported throughout the entire period since the last field check was made.

20. CONSTRUCTION OF AGREEMENT

This agreement is deemed executed in the State of Minnesota and shall be construed under the laws of the State of Minnesota.

21. PRIOR AGREEMENTS SUPERSEDED

This agreement supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee with respect to the subject matter of this agreement. The agreement constitutes the final expression of the parties' agreement, and the complete and exclusive statement of the terms agreed upon. This agreement supersedes all prior negotiations, understandings, agreements and representations. There are no oral or written understandings, agreements or representations not specified herein. Furthermore, no waiver, consent, modifications or change of terms of this agreement shall bind either party unless in writing and signed by both parties.

22. ASSIGNMENT OF AGREEMENT

Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party.

23. GOVERNING LAW

This agreement shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

ROCHESTER PUBLIC UTILITIES

General Manager

Printed Name

ARVIG ENTERPRISES, INC.

David Schornack

It's *Director of Bus Dev + Sales*

David Schornack

Printed Name

CITY OF ROCHESTER

Mayor

Printed Name

Reviewed as to Form:

City Attorney

Printed Name

Attest:

Dated: _____

City Clerk

AUTHORIZATION OF CORPORATE AGENT

The _____ does hereby authorize _____
(Name of Corporation) (Name of Person(s))
_____ to act as an agent of _____ and to bind
(Name of Corporation)
_____ to contracts entered into with the City of Rochester. The
(Name of Corporation)
purpose of this authorization is to allow officials of the City of Rochester to accept _____
(Name of
_____ 's signature as an official act of _____
person(s) (Name of
_____. This authorization is effective _____ and
Corporation) (Date)
remains effective until such time as it is revoked by the _____ 's
(Name of Corporation)
board of directors. No revocation of this authorization shall be effective until such time as it is filed with
the City Clerk of the City of Rochester.

Chairman, Board of Directors

Name of Corporation

STATE OF Minnesota

COUNTY OF Otter tail

On this date appeared before me David Schornack personally known
Director (Name of Chairman, Board of Directors) Director
to me to be ~~the chairman of the board of directors~~ of Arvig Enterprises, Inc
(Name of Corporation)

who has indicated to me that (s)he is authorized by the board of directors of Arvig
Enterprises, Inc (Name of Corporation) to execute the above Authorization of Corporate Agent for purposes of
executing contracts with the City of Rochester.

Susan J. Adams
Notary Public
My commission expires:
Jan 31, 2015



SEAL

Exhibit A
Revised, Effective January 1, 2007

1. Fees are dollars per each type of attachment per year with no prorating based on total number of attachers on each pole:

Fee per attacher per pole per year based on number of attachers on an individual pole.

Distribution Poles:

<u>Type of Attachment</u>	<u>One Attacher</u>	<u>Two Attachers</u>	<u>Three Attachers</u>
Cable	\$22.00	\$17.00	\$12.00
Equipment	\$17.00	\$17.00	\$17.00
Anchor System	\$17.00	\$17.00	\$17.00

Transmission Poles (applicable to attachments made after January 1, 2007):

<u>Type of Attachment</u>	<u>One Attacher</u>	<u>Two Attachers</u>	<u>Three Attachers</u>
Cable	\$150.00	\$80.00	\$50.00
Equipment	\$80.00	\$80.00	\$80.00
Anchor System	\$80.00	\$80.00	\$80.00

2. Licensee shall be required to remit to Licensor a one-time non-refundable per pole application fee for all new attachments in the following amounts:

\$25 per pole for the first 50 poles

\$15 per pole for the next 50 poles

\$10 per pole over 100 poles up to a general limit of 150 poles per application

This per pole application fee shall not apply to pre-existing attachments at the time this agreement is executed.

3. Licensee shall remit to Licensor a Ten Thousand dollar (\$10,000) non-refundable administrative fee for a new joint use agreement entered into after January 1, 2007. This administrative fee shall not apply to a licensee that already has existing attachments on poles prior to January 1, 2007.
4. Licensee shall remit to Licensor a Two Thousand Five Hundred dollar (\$2,500) non-refundable administrative fee for a modification of an existing joint use agreement.
5. Licensee shall remit to Licensor a non-refundable per pole administrative fee for the performance of a survey of poles and attachments for the purpose of verifying pole ownership, type and owner of attachments, and any National Electric Safety Code (NESC) violations associated with attachments. These violations include but are not limited to clearances, safety zone, guying, or structural violations. Such survey may be done at the sole discretion of the Licensor.

Exhibit B
Rules and Practices for
Pole Attachments

1. All facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the "National Electrical Safety Code" in effect at the time of the installation. All facilities attached to Licensor's poles shall be designed and installed to NESC Class B construction standards. Under no circumstances will NESC Class C construction be allowed.
2. The location of all lines, attachments, apparatus, power supplies, amplifiers, repeaters or similar equipment on Licensor's poles shall be approved in writing by the Licensor. No attachments shall be made without prior approval of Licensor. Licensee shall provide the following information to help determine whether the poles have sufficient strength for the proposed attachments: type of cable and strand, weight per foot of cable and strand, diameter of cable and strand, breaking strength of strand, self-supporting or lashed cable, and existing cable attachments.
3. All lines, attachments, apparatuses and power supplies shall be located on the same side of each pole as any existing attachment, or as designated by the Licensor.
4. On jointly used poles where Licensor has secondary conductors, all attachments and power supplies shall be as designated by the Licensor.
5. Licensee's service connections or drops to its customers shall be installed and maintained so as to provide at least a forty (40) inch square climbing space directly over and corresponding to the climbing space provided for and through any service connections or drops.
6. Licensee shall cause all cabinets and enclosures to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.
7. Power supply may be installed on any of Licensor's poles subject to approval by Licensor.
8. No bolt used by Licensee to attach its facilities shall extend or project more than (1) inch beyond its nut.
9. All attachments or facilities of Licensee shall have at least two (2) inches clearance from unbounded hardware.
10. All attachments shall have at least forty (40) inches clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty (40) inches clearance under the current carrying parts of such equipment (energized at 13,800 volts or less). Clearances not specified in this rule shall

be determined by reference to the most current edition of "National Electrical Safety Code." A typical example of joint pole spacing is shown in Exhibit B-1.

11. No service connection shall be made or installed by Licensor until after Licensee shall have completed installation of an approved fused service disconnect switch or circuit breaker and any applicable permit is filed.
12. The Licensee may, with the prior written approval of the Licensor, install crossarms, alley arms, or line extension arms for the support of any of its facilities. However, Licensee shall not use any crossarm or alley arm brace above the arm that it supports.
13. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole(s), and all subject to the approval of Licensor, provided that Licensee shall be solely responsible for compliance with the specifications referred to in Section 5 of this License Agreement.
14. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to jointly used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least three inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
15. In the event that any of the Licensee's proposed facilities are to be installed upon poles already jointly used by Licensor and other parties, without in any way modifying the clearance requirements set forth in these Rules and Practices, Licensee shall negotiate with such other parties, as to clearances between its facilities and the spans of Licensee and such other parties.
16. In the event Licensee desires to request a change in the number of pole contacts, it shall do so by submitting to Licensor the standard form suitable for that purpose.
17. The Licensee agrees to plug any unused or abandoned holes drilled in Licensor's poles with approved plugging methods.
18. Licensee is not permitted to increase the number of wires or attachments to a pole without first receiving approval from Licensor. Licensee shall be required to comply with all terms of Section 2 and 3 of the agreement.
19. The Licensee shall provide a written statement, signed by a Professional Engineer representing the Licensee, that its facilities, including protection devices, as installed are fully in compliance with the applicable rules of the "National Electrical Safety Code", other codes and requirements, and good engineering design. This inspection shall be

made within thirty (30) days after installation has been completed. Failure to comply will result in termination of this agreement as outlined in Section 10, a, b, & c.

- 20. The expense incurred by Licensor or review the Licensee's proposed attachments, and any project review shall be the sole expense of the Licensee regardless of whether the attachments are approved or not.
- 21. Attachment height must be no less than 64" below electric primary Neutral to allow installation of future transformers and electrical underbuilds. Attachment above this level will only be allowed by special Licensor exemption.

<u>Certification to be Completed by Licensee's Engineer</u>	
I hereby certify that upon final inspection of the attachments described below that they fully comply with the National Electrical Safety Code, latest edition, and no poles or facilities of Rochester Public Utilities will be in violation of the National Electrical Safety Code as a result of said attachment and the NESC Class B construction has been maintained. The attachments inspected and certified are described as _____.	
_____	_____
Registration Number (State)	Engineer's Signature

Date	

Exhibit B-1

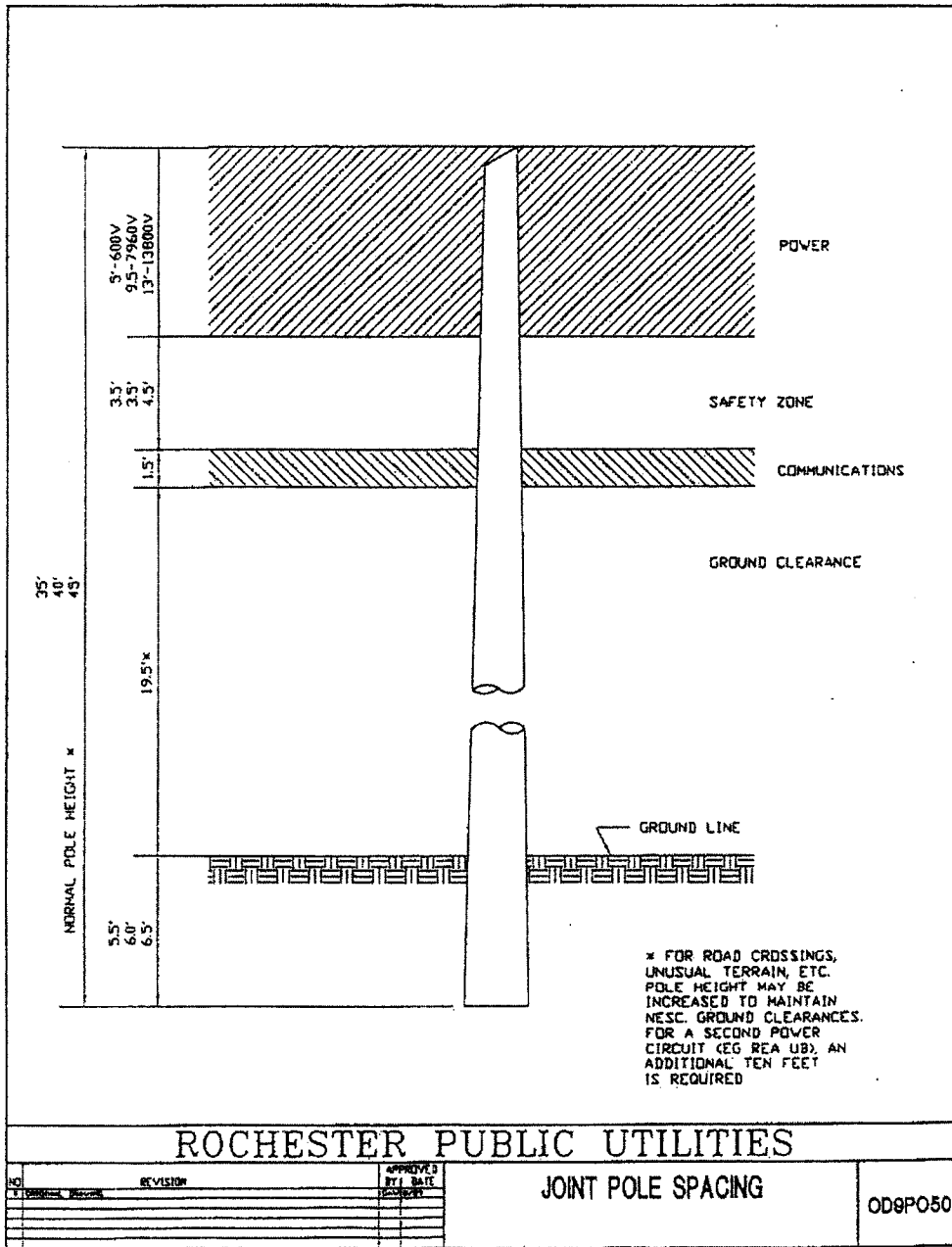


Exhibit C

Application for Pole Attachment Permit

Application is hereby made for permission to make attachments to _____ (number) poles in Section(s) _____, Township _____, Range _____, as indicated on the map provided on the reverse side of this sheet or attached hereto.

Number of cables _____; Cable Diameter _____; Design maximum tension _____

Licensee

By (Print Name)

Date

Signature

Cost Estimate

Rochester Public Utilities has reviewed your Application for Pole Attachment Permit Number _____ . The Application _____ Accepted

_____ Rejected

The estimated cost of changes required to accommodate this request is _____.

Rochester Public Utilities

Licensor

By (Print Name)

Date

Signature

Acceptance of Cost Estimate

We agree to pay the above costs and hereby request the Authorization of Permit be executed.

Licensee

By (Print Name)

Date

Signature

Authorization of Permit

Permission is granted to make attachments described in the above application.

Rochester Public Utilities

Licensor

By (Print Name)

Date

Signature

Status of Pole Attachments

Pole Attachments

Previous Count _____

Date _____

Added by this permit _____

By _____

New Count _____

Approved _____

Exhibit D

Notice of Removal of Pole Attachments

Notice is hereby given that attachments have been removed from _____ (number) poles in Section(s) _____, Township _____, Range _____, as indicated on the map provided on the reverse side of this sheet or attached hereto.

Licensee

By (Print Name)

Date

Signature

Notice of Acknowledgment

Rochester Public Utilities
Licensor

By (Print Name)

Date

Signature

Status of Pole Attachments

Pole Attachments

Previous Count _____

Date _____

Deleted by this permit _____

By _____

New Count _____

Approved _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/17/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dawson Insurance Agency 721 1st Avenue North Fargo ND 58107	CONTACT NAME: PHONE (A/C, No, Ext): 701-237-3311		FAX (A/C, No): 701-232-4442
	E-MAIL ADDRESS: jen@dawsonins.com PRODUCER CUSTOMER ID #: ARVIG-1		
INSURED Arvig Enterprises, Inc and all subsidiaries 150 Second Street SW Perham MN 56573	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Continental Western		25844
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES

CERTIFICATE NUMBER: 1277551103

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

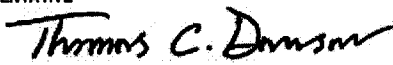
INSR LTR	TYPE OF INSURANCE	ADDC INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			RUP2847400	1/1/2010	1/1/2011	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			RUP2847400	1/1/2010	1/1/2011	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DEDUCTIBLE RETENTION \$			RUP2847400	1/1/2010	1/1/2011	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
								\$
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			WC STATUTORY LIMITS	OTHER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
A	Property			RUP2847400	1/1/2010	1/1/2011	Property	\$37,002,048

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Rochester, MN, acting through its Public Utility Board is included as an Additional Insured on the General Liability policy.

CERTIFICATE HOLDER

CANCELLATION

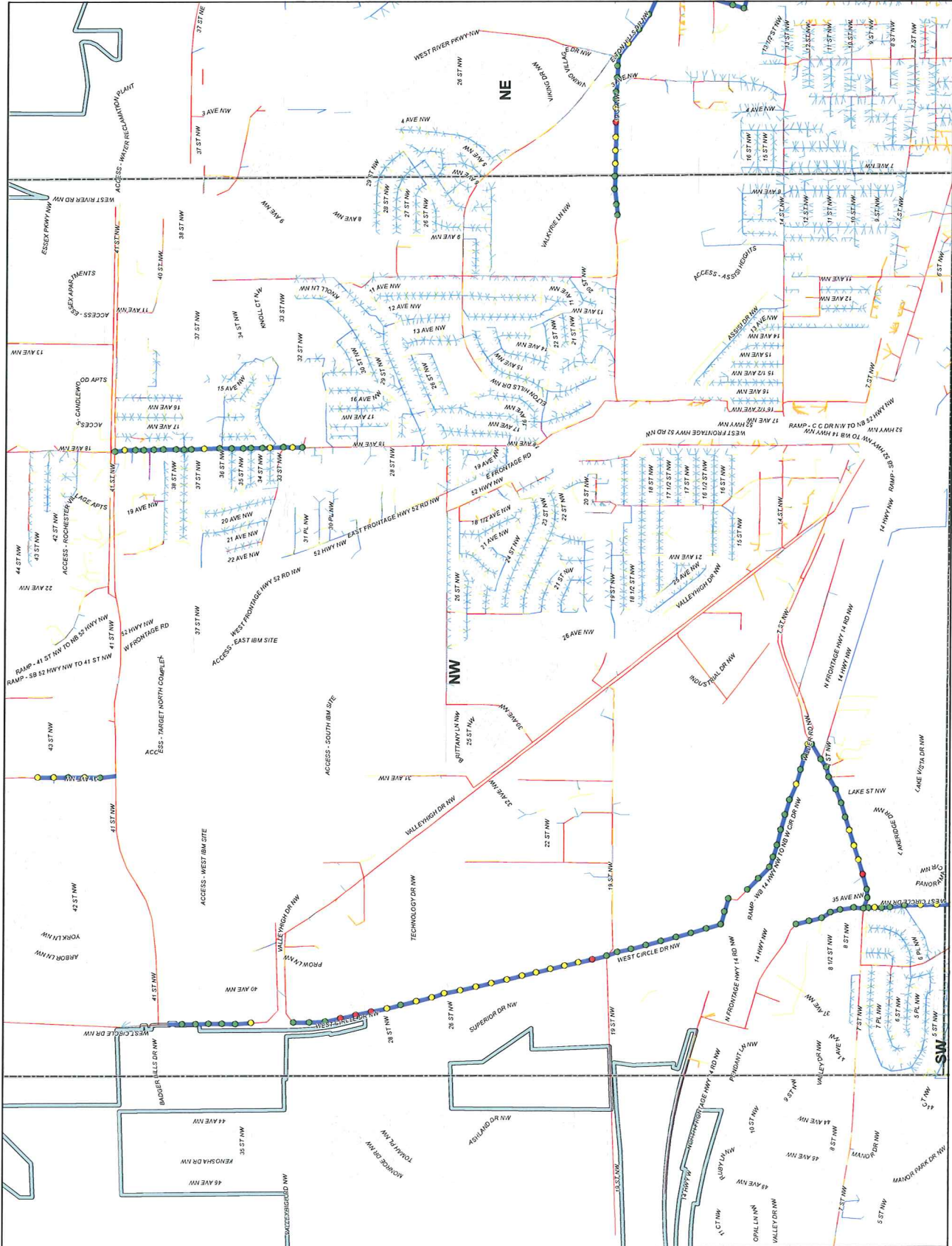
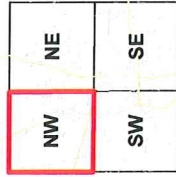
City of Rochester, MN, acting through its Public Utility Board 4000 E River Rd NE Rochester MN 55906-2813	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Rochester Public Utilities

Load Calculation Analysis

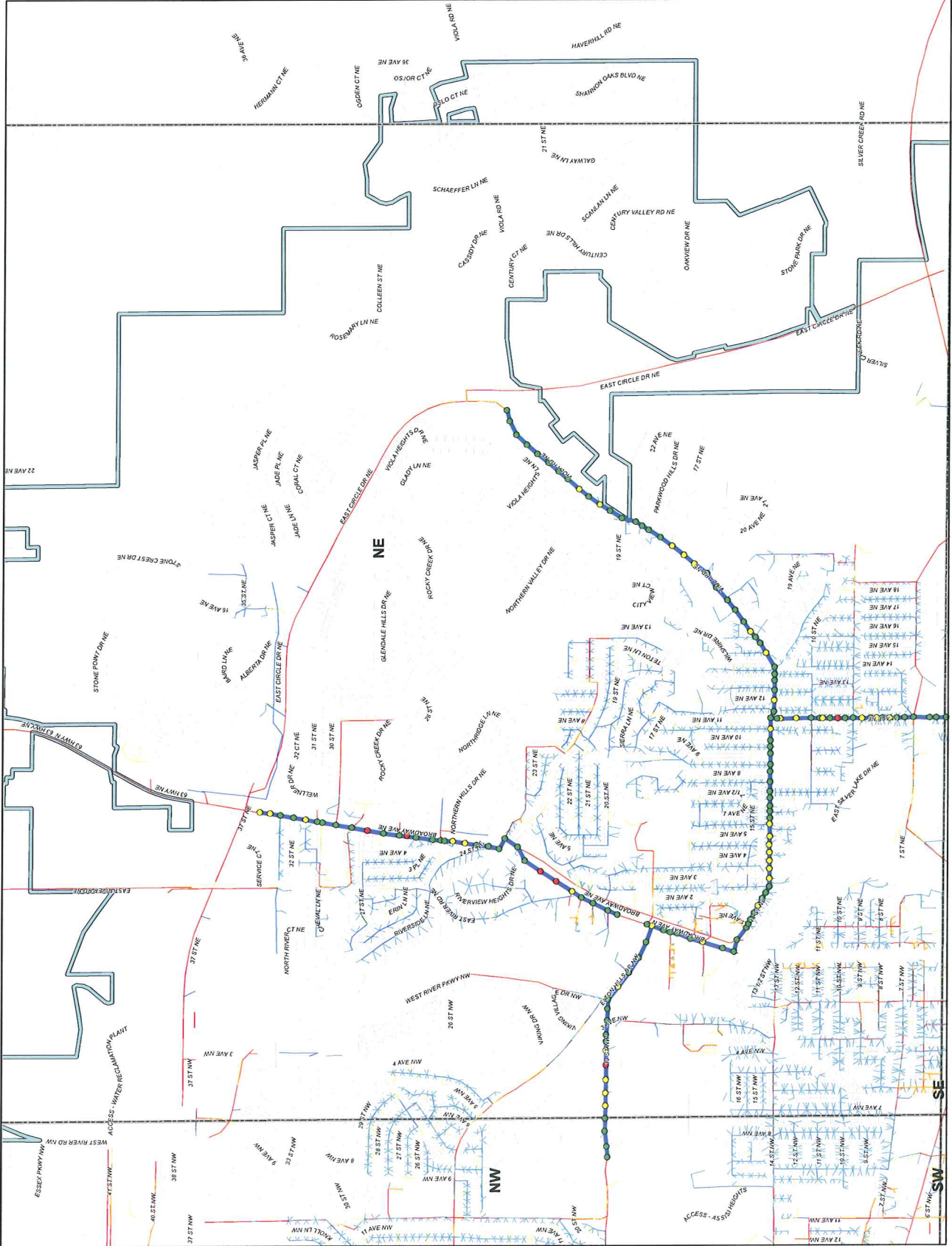
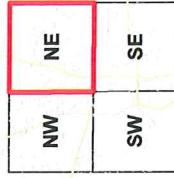
- Pass
- MR- Guy at Zayo Fiber
- MR- Guy at Primary Conductor
- Above Ground Fiber Route
- Overhead Electric Line Segment
- Three Phase Primary Overhead
- Three Phase Secondary Overhead
- Two Phase Primary Overhead
- Single Phase Primary Overhead
- Single Phase Secondary Overhead
- Overhead Streetlight Conductor
- ☐ Match Line
- ☐ City Limit



Rochester Public Utilities

Load Calculation Analysis

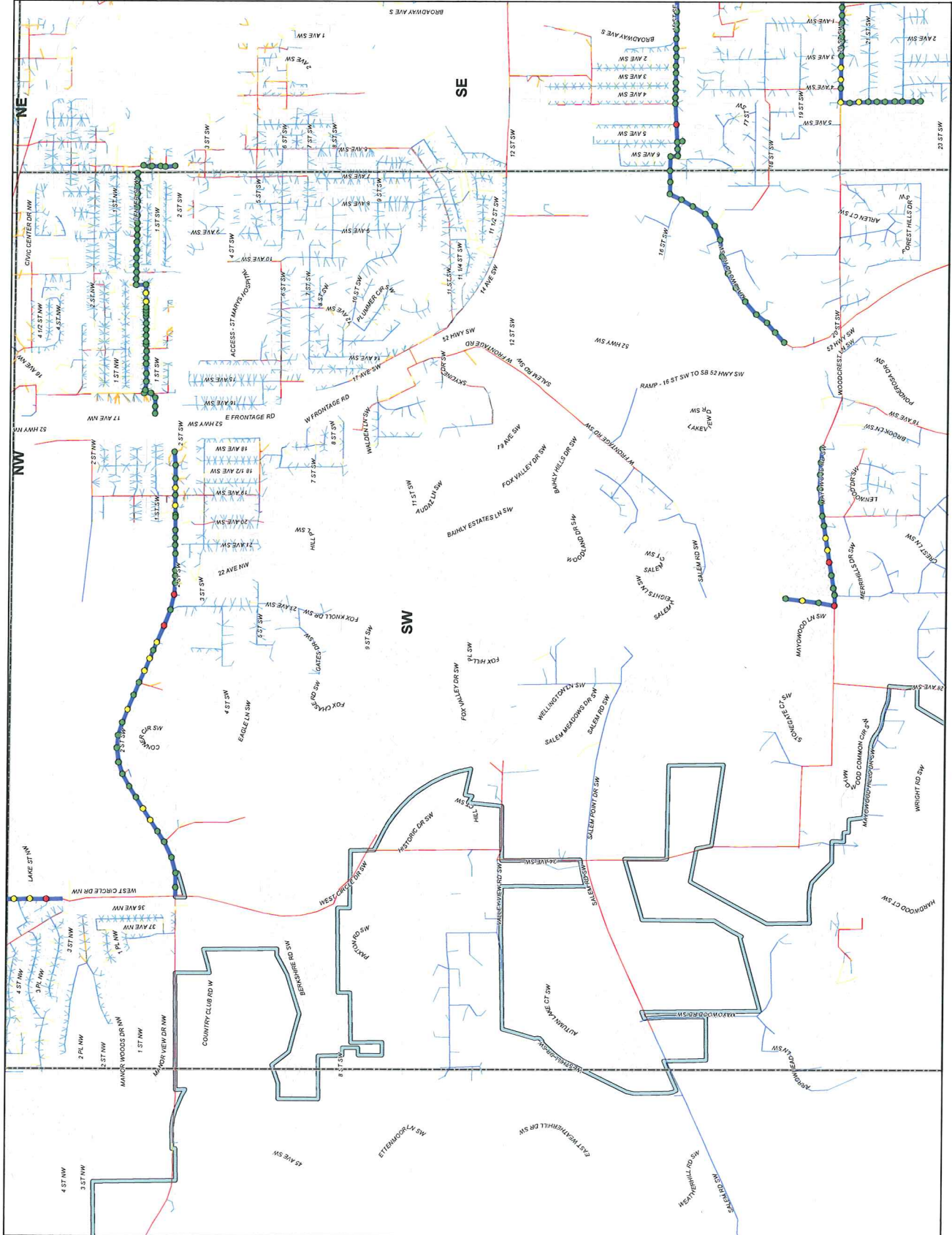
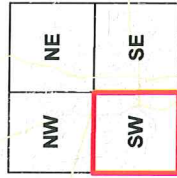
- Pass
- MFR- Guy at Zayo Fiber
- MFR- Guy at Primary Conductor
- Above Ground Fiber Route
- Overhead Electric Line Segment
- Three Phase Primary Overhead
- Three Phase Secondary Overhead
- Two Phase Primary Overhead
- Single Phase Primary Overhead
- Single Phase Secondary Overhead
- Overhead Streetlight Conductor
- ▭ Match Line
- ▭ City Limit



Rochester Public Utilities

Load Calculation Analysis

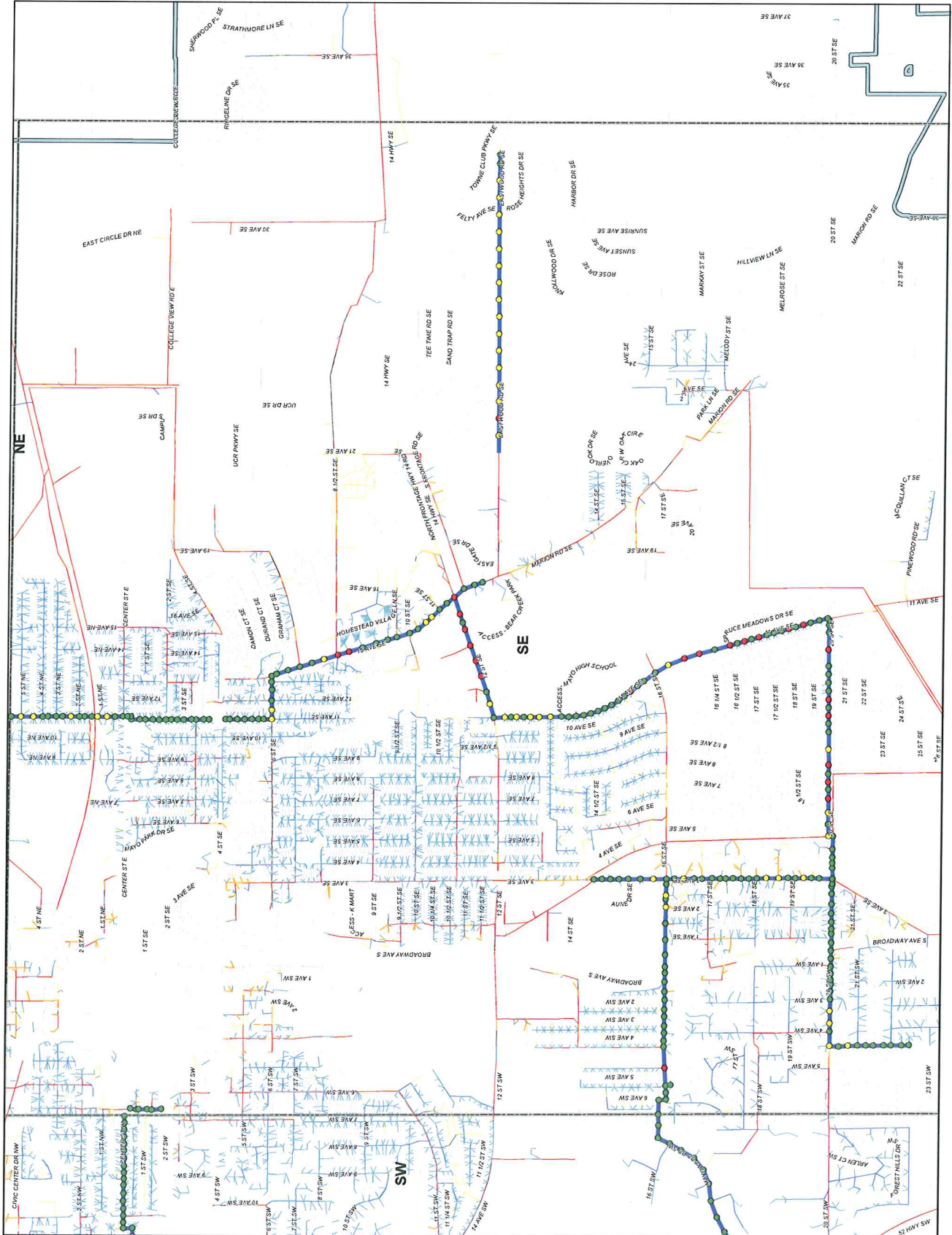
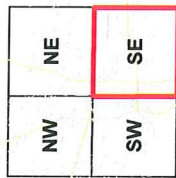
- Pass
- MR- Guy at Zayo Fiber
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- Three Phase Secondary Overhead
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- Single Phase Secondary Overhead
- Overhead Streetlight Conductor
- ▭ Match Line
- ▭ CityLimit



Rochester Public Utilities

Load Calculation Analysis

- Pass
- MR- Guy at Zayo Fiber
- MR- Guy at Primary Conductor
- Above Ground Fiber Route
- Overhead Electric Line Segment
- Three Phase Primary Overhead
- Three Phase Secondary Overhead
- Two Phase Primary Overhead
- Single Phase Primary Overhead
- Single Phase Secondary Overhead
- Overhead Streetlight Conductor
- ☐ Match Line
- ☐ City Limit





RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve a contract agreement with Arvig Enterprises, Inc. and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Joint Pole Attachment License Agreement

The amount of the contract agreement to be based on unit pricing as established by the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 28th day of September, 2010.

President

Secretary