



AGENDA
COMMITTEE OF THE WHOLE
Tuesday, January 5, 2016 at 6:30 p.m.
Common Council Chambers - 224 East Jefferson Street

Mayor Robert Miller
Edward Johnson, Alderman, 1st District
John Ekes, Alderman, 1st District
Ruth Dawidziak, Alderman, 2nd District
Bob Grandi, Alderman, 2nd District
Tom Vos, Council President, Alderman, 3rd District
Jon Schultz, Alderman, 3rd District
Thomas Preusker, Alderman, 4th District
Todd Bauman, Alderman, 4th District

Student Representatives:
Shiyue Xie (BHS)
Abigail Sibilski (BHS)

1. Call to Order – Roll Call
2. Citizen comments
3. Approval of minutes for December 15, 2015 (*T. Preusker*)
4. **Topic:** Motion 15-822 to consider entering into an agreement with Swagit for Council Meeting Web Streaming and Agenda Software Management. This item was originally discussed at the November 17, 2015 Committee of the Whole meeting and is being placed again on tonight's Committee of the Whole meeting for further discussion and then for final consideration at the January 19, 2016 Common Council Meeting.
5. **Adjourn** (*T. Bauman*)



CITY OF BURLINGTON

Administration Department
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 – (262) 763-3474 fax
www.burlington-wi.gov

Committee of the Whole Number: 3	Date: January 5, 2016
Submitted By: Diahnn Halbach, City Clerk	Subject: Meeting Minutes

Details:

Staff recommends approval of the attached Minutes from the December 15, 2015 Committee of the Whole meeting.

Options & Alternatives:

N/A

Financial Remarks:

None.

Executive Action:

Staff recommends that the Common Council approve these Minutes at the January 5, 2016 Committee of the Whole meeting and as a report on the Common Council Agenda.



CITY OF BURLINGTON
Committee of the Whole Minutes
Robert Miller, Mayor
Diahnn Halbach, City Clerk
Tuesday, December 15, 2015

1. Call to Order/Roll Call

Mayor Robert Miller called the meeting to order at 6:30 p.m. starting with roll call. Aldermen present: Ed Johnson, John Ekes, Bob Grandi, Tom Vos, Jon Schultz, and Todd Bauman. Excused: Ruth Dawidziak, Tom Preusker.

Student Representatives Present: Abigail Sibilski. Student Representatives Excused: Shiyue Xie.

Also present: City Administrator Carina Walters, City Attorney John Bjelajac, Treasurer and Budget Officer Steven DeQuaker, Director of Administrative Services Megan Watkins, Police Chief Mark Anderson, DPW Director James Bergles, DPW Supervisor Dan Jensen, Building Inspector and Zoning Administrator Gregory Guidry, and Tom Foht of Kapur and Associates.

2. Citizens Comments and Questions

None

3. Approval of Minutes from December 1, 2015

A motion was made by Bauman with a second by Ekes to approve the minutes from December 1, 2015. With all in favor, the motion carried to approve the minutes.

4. Topic: Resolution 4759(33) to consider approving a joint resolution of the City of Burlington and the Board of Health for the Central Racine County Health Department to provide for the addition of the City of Burlington as a member municipality to the Board of Health.

Mayor Miller introduced Resolution 4759(33) and then opened it up for discussion.

Schultz stated that this would allow a City of Burlington representative to become a voting member on the Racine County Board of Health.

5. Topic: Resolution 4760(34) to consider approving Task Order Number Ninety-Five with Kapur and Associates to develop and submit an Urban Nonpoint Source Storm Water Management Plan to the Department of Natural Resources (DNR) at a cost of \$121,844.00.

Mayor Miller introduced Resolution 4760(34) and explained that because the City of Burlington's population has reached over 10,000, the City is now required to comply with additional DNR requirements of the Wisconsin Pollution Discharge Elimination System (WPDES). Mayor stated that step one is to determine where the inflow is coming from, mapping them all out and making a determination if treatment is needed and if so, how to go about that process.

Tom Foht of Kapur and Associates, explained that the scope of services needed to provide the urban nonpoint source and storm water management plan to the City would cost an estimated \$121,844; however, the City has received a grant from the DNR for a match of up to 57% of the cost of the plan, up to \$80,000. Foht explained once the entire collection of storm sewer data is evaluated, a Storm Water Management

Report would be submitted to the Wisconsin Department of Natural Resources along with the MS4 permit applications with recommendations, options, and schedules.

6. **Topic:** Resolution 4761(35) to consider authorizing a \$450,000 Loan from the Fox River State Bank for TIF 5.

Mayor introduced Resolution 4761(35) and explained that this is the final paperwork authorizing Fox River State Bank to loan the City of Burlington up to \$450,000 for the TIF District 5 expenditures over the 4.5M Bond and is a taxable general obligation promissory note and a non-revolving line of credit with a six month draw.

7. **Adjourn**

A motion was made by Grandi with a second by Johnson to adjourn the meeting. With all in favor, the meeting adjourned at 6:50 p.m.

Minutes respectfully submitted by:



Diahnn C. Halbach
City Clerk
City of Burlington



Administration Department
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 – (262) 763-3474 fax
www.burlington-wi.gov

Committee of the Whole Item Number: 5	Date: January 5, 2016
Submitted By: Carina Walters, City Administrator	Subject: <u>Motion 15-822</u> to consider entering into an agreement with Swagit for Video Web Streaming and Paperless Agenda System for Common Council Meetings

Details:

The Swagit Video Web Streaming and Paperless Agenda System was originally introduced to the Committee of the Whole at its November 17, 2015 meeting. As a result of the discussion the elected officials had several questions. **Attached to this cover memo are the answers to those questions asked.**

Background:

In 2012, the Common Council discussed paperless agenda management and video web streaming of Council meetings to increase transparency, efficiency and reduce our overall carbon foot print. Part of the overall project included a plan for implementing tablets/iPads and paperless meeting packets which were implemented in 2015. In November 2014, the City contracted with Granicus to provide video web streaming and agenda management; however, the contract was cancelled by the City in 2015 due to a lack of customer service.

During your November Committee of the Whole meeting, staff recommended contracting with Swagit services to provide 1) video indexing and archiving services and 2) Swagit's agenda management program is very comprehensive and allows for the creation of the agenda, integration of materials, video integration, includes a staff review process of submitted materials and streamlines minute creation after the meeting. Staff still recommends moving forward with Swagit.

The contract amount with Swagit for video web streaming and agenda management includes the following costs:
\$ 8,750 - Initial set-up and installation fee (\$1800 Swagit EASE hardware/software; \$6950 AgendaQuick)
\$ 7,740 (\$645 per month) – on demand and live video streaming
\$16,490 = Total First Year Cost

After the first year, beginning in 2017, the City will pay \$11,940 per year (\$4200 AgendaQuick; \$7740 Streaming Video)

As a part of the contract, the City will annually review the benefits and can terminate this contract not less than sixty (60) days prior to the end of the then current term.

Options & Alternatives: The Council could chose to keep things status quo and not contract for these services or seek other methods of providing transparency and efficiencies.

Financial Remarks: The \$16,490 first year cost and the \$11,940 annual cost beginning in 2017, were included within the Equipment Replacement Fund. Savings provided by using the agenda management tool are several hours of staff time per week with multiple employees.

Executive Action:

This item is for discussion at the January 5, 2016 Committee of the Whole meeting and will be placed on the January 19, 2016 Common Council meeting for final consideration.

SWAGIT Q&A

1. Is this live streamed?

The current proposal is not live-streamed. If we would like it live-streamed, the cost would be an additional \$100 per month. If not, how long will it take? The video would be posted within 3-4 hours of the meeting.

2. Can we track the number of viewers and specifically track “what” they are watching, not just the entire video?

Yes. Once the video is archived, per our Google analytical account, specific tracking per agenda item is captured and can be analyzed. This can only be done once the meeting has been archived, not during live-streaming.

3. From my understanding the meetings will be indexed within 24 hours (this is not done live, correct)?

Yes and no. The indexing is done while the meeting is happening in one block increments; however the complete indexed video isn't posted until after the meeting.

4. When the videos are indexed, can elected officials go to the City website, go to the web page where swag it is imbedded, and copy and paste the hyperlink of the “exact” point of the video in which constituents want (to view to place on social media sites)?

Yes! There is actually a “share” tab located on the video page, as well as social media thumbnails. You can easily locate the exact point of the video and post it to Facebook, LinkedIn, Twitter, etc... (ex: <http://metuchennj.swagit.com/> - go to the “Video” column and click “play”. Select the media index and the click the “share” tab – post the link from there)

5. We have approximately 80 GB in storage, if we go over, how much is the cost?

The 80GB of storage was just recently changed and is now obsolete. There is now unlimited storage!

6. The City installed 3 cameras (which we need to ensure are working properly) I am pretty certain we discussed that the package provides only one camera angle, is this accurate? We could include more; however, there would need to be a person changing the camera angle, correct?

SwagIt does not control our cameras. If the City wants to provide different angles during the meetings, then it would be up to us to have somebody in the control room doing so. As far as hooking up the system, the City should be able to use Digicorp to install the encoder and connect the audio and video mixer. They can work directly with SwagIt technical support for all the specifics. If our IT is not able to do the install, SwagIt can send somebody out to do it for approx. \$2000.

7. Can we have an agreement with Swagit ease and the agenda management to begin reviewing?

An Agreement will be provided to us no later than Monday, December 7, 2015.

PRICING – EASE™ Up-Front Costs

Swagit's EASE™ encoders offer broadcasters and other administrators the ability to stream live events to cable television providers (i.e. AT&T U-verse®), over the Internet through a high speed connection, or to mobile devices such as iPhones, iPads or Androids. Furthermore, the unit can record and archive all media for on-demand viewing as well.

Item Description	Type	Costs (Up-Front)
Basic Encoder -Hardware/Software (AT&T U-verse® Compatible) SD/Analog	Workstation / 1U Rackmount	
Swagit Encodr, Encoder Software Installation, System Burn-In		
Branded Video Library Design, Branded Player Design		
Remote Install (Typically 3 hours)		
Licenses for Software/Tools (Flash Media, EASE™, WOWZA, HTML5, Microsoft OS)		
Osprey Video Capture Card w/Simulstream Software	260-e	
Basic - Hardware/Software (AT&T U-verse® Compatible) + Osprey		= \$ 1,800.00

* Price and hardware model are subject to change after 90 days without prior notice.

PRICING – EASE™ Monthly Managed Services

Swagit's Extensible Automated Streaming Engine (EASE™) solution meets all current and future needs for government **without** creating any additional work for staff. EASE™ is a hands-free tool that eliminates the need for client staff members to spend time on indexing, editing or time-stamping video content. Each EASE™ package includes *On-demand* archiving, a 24/7 LIVE Stream via Internet and PEG, streaming to Apple devices (ex: iPad & iPhone) and up to 120 hours of additional specialty content each year. Client also has the ability to upload media via FTP as an option if live streaming is not applicable.

Service Description		Costs (Yearly)
Package 1	(EASE™) Up to <u>50</u> indexed meetings a year	\$ 9,540.00
Package 2	(EASE™) Up to <u>50</u> indexed meetings a year (discount applied if purchasing both programs)	\$ 7,740.00

Total First Year Cost For Video Streaming	
\$ 9,540 or \$7,740	

PRICING

HOSTED

AgendaQuick - Hosted Plan – Agenda & Minutes Module

Software as a Service (SaaS) Hosted by Destiny Software

HOSTED – 5 MEETING TYPES

Annual Hosting Fee – Up to 5 Meeting Types	\$4,200
Installation and Setup	\$2,750
<u>Online Training (Admin and Users)</u>	<u>Included</u>
Total Cost Year One – 5 Meeting Types	\$6,950

YEARLY MAINTENANCE & SERVICE

Annual Hosting Fee – Up to 5 Meeting Types (Years 2, 3 & 4)	\$4,200
--	----------------

HOSTED – UNLIMITED MEETING TYPES

Annual Hosting Fee – Unlimited Meeting Types (Optional)	\$6,200*
Installation and Setup	\$2,750
<u>Online Training (Admin and Users)</u>	<u>Included</u>
Total Cost Year One – Optional Unlimited Meeting Types	\$8,950*

YEARLY MAINTENANCE & SERVICE

Annual Hosting Fee – Unlimited Meeting Types	\$6,200
--	----------------

**AGREEMENT FOR
VIDEO STREAMING SERVICES**

**CITY OF BURLINGTON
and
SWAGIT PRODUCTIONS, LLC**

This Agreement for Video Streaming Services ("Agreement") is made by and between the City of Burlington, Wisconsin ("City"), a municipal corporation with offices at 300 N. Pine St., Burlington, Racine County, Wisconsin 53105, and Swagit Productions, LLC, ("Provider") a Texas Limited Liability Company, with offices at 850 Central Parkway E., Suite 100, Plano, Texas 75074 effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain video streaming services for scheduled meetings as outlined in the Scope of Services attached as Exhibit "A"; and
- B. Provider has available and offers to provide the personnel necessary to provide said services in accordance with the Scope of Services included in this Agreement (see Exhibit A attached hereto and incorporated herein); and
- C. Provider is in the business of providing video streaming services for businesses and governmental entities, and represents and warrants that it has the skills, qualifications, expertise and experience necessary to perform the work and services to provide and implement video streaming services as described herein in an efficient, cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers; and
- D. On the basis of and in reliance upon such representations by Provider and others made herein and in Provider's proposal, the City desires to engage Provider to provide the work and services described herein under the terms and conditions of this Agreement.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following work and services for the City:

- 1.1 Provider agrees to provide the work and services as set forth in the Scope of Services.
- 1.2 Provider shall convey to the City a license and agreement for use of *AgendaQuick – 'Web-based agenda software system and Swagit Video Integration'* software. All of the terms and conditions set forth and pertaining to *AgendaQuick* in Exhibit "B" (entitled "AgendaQuick" and so called herein) shall be incorporated in this Agreement as if fully set forth herein.

2. COMPENSATION OF PROVIDER

- 2.1 Provider agrees to provide all of the services and equipment set forth in the Scope of Services and as described herein for the following amounts:
 - (a) A one-time charge not to exceed:
 - (i) **Eight Thousand Seven Hundred Fifty and No/100 Dollars** (\$8,750.00) for Swagit EASE hardware/software, AgendaQuick - Web-based agenda software system and other related (including, without limitation, Remote Installation, Online Training, First Year Annual License and Maintenance Fee for AgendaQuick and Design) costs (as identified and detailed on the attached Exhibit "A", page 3, "*Streaming Video Hardware*");
 - (b) Following the Installation at the site of all equipment and the acceptance thereof by the City, the City shall pay to provider a monthly fee in the amount of **Six Hundred Forty-Five and No/100 Dollars** (\$645.00) for on-demand and live video streaming (as identified and described on the attached Exhibit "A", page 3, "*Streaming Video Monthly Managed Services*").
 - (c) Following the first year of AgendaQuick service by the Provider, the City shall pay to the Provider a yearly fee in the amount of **Four Thousand Two Hundred and No/100 Dollars** (\$4,200.00) for AgendaQuick Annual License and Maintenance Fee (as identified and described on the attached Exhibit "A", page 4, "*AgendaQuick – Schedule B*").
- 2.2 Except as set forth herein, payments will be processed on a monthly basis, unless annual billing has been requested, with payment available within 30 days after receipt of an invoice for the previous month's service. All payments pursuant to this Agreement shall be made promptly and without undue delay, and in no circumstance beyond 60 days from the due date.
- 2.3 Should the City fail to pay any invoice that is outstanding more than 60 days, a 5% service fee will be applied to the total amount of that invoice, not including any

shipping or sales tax.

3. RIGHTS, OBLIGATIONS AND REPRESENTATIONS OF PROVIDER

- 3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. Further, nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the manner in which Provider performs the work and services, which are the subject matter of this Agreement. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.
- 3.2 Provider's Control of Work. All services to be provided by Provider shall be performed in accordance with the Scope of Services. Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel. Provider warrants and represents that all equipment and other goods and materials provided by Provider shall be safe, fully operational, and will not cause injury or damage to any person or property, and that all persons provided by Provider to perform the work and services under this Agreement shall be adequately trained and capable of performing the work and services.
- 3.3 Reports to the City. Although Provider is responsible for control and supervision of work and services performed under this Agreement, the work and services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services.
- 3.4 Compliance with All Laws. Provider shall comply with all applicable laws, statutes, ordinances, rules, regulations, standards, codes, and executive orders of the federal, state and local government, which may affect the performance of this Agreement.
- 3.5 Organization and Authorization. Provider warrants and represents that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and which shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been

authorized and approved by all action required on the part of Provider; (v) has the right and authority to sell the hardware and software to the City; (vi) all hardware and software shall be in good working order; and, (vii) all licenses and warranties regarding the software and hardware shall be conveyed to the City.

- 3.6 No Conflict. Provider warrants and represents that the execution and delivery of this Agreement and ancillary agreements hereto by Provider does and will not: (i) conflict with, or result in any violation or breach of, any provision of Provider's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Provider is a party; or (iii) conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to Provider.
- 3.7 Warranty. Provider warrants that: (i) any streaming server hardware provided by Swagit (as identified and described in the Scope of Services, page 3, "*Streaming Video Hardware*") not in good working order and used under normal operating conditions, will be fully replaced for a period of three (3) years; (ii) thereafter, all costs of streaming server hardware replacement due to any failure or caused by normal wear and tear, shall be at the City's expense; (iii) all operating and proprietary software for any streaming server shall be fully replaced or upgraded, at no cost to the City, for the life of the contract; and (iv) in the event of a complete hardware failure within the warranty period, Provider shall overnight replacement parts and/or a new server at its sole expense.
- 3.8 Provider's Service Network. Provider's content delivery network and service level represents that: (i) it maintains full N+1 redundancy on all service critical-infrastructure in order to protect against outages. Multiple mirror facilities provide diverse geographic redundancy. Within each facility servers have multiple power supplies, network interfaces and RAID protected storage. Provider is connected to upstream bandwidth providers by multiple gigabit uplinks, transitioning to gigabit and ten-gigabit connections to multiple "tier 1" bandwidth providers, offering route diversity and redundancy. These bandwidth providers maintain 24/7 staffs familiar with mitigating Denial of Service attacks, should the need arise, which they have sufficient capacity to absorb-and-filter; (ii) Provider utilizes external, 3rd party monitoring services to track server availability metrics. This service tracks availability from approximately 30 international points which helps isolate regional networking issues, in addition to any centralized failures; (iii) Content is stored and viewable to the public on the Provider's networks for a period of three years or as defined by the managed services agreement. All Content is stored and backed up offline indefinitely for the life of the Agreement. Content can also be stored locally on the City's network for an indefinite period of time limited only by storage capacity, with the added benefit of cached delivery to local users. City is consulted before they exceed any storage horizon and may extend the window for additional years; (iv) Content is stored in widely accessible formats and is available for export at any time. Exported data will include multimedia content and associated documents in their native format as well as any structured metadata in XML format. Access to exported content can be via FTP but in such an event the City is

encouraged to provide a portable hard drive to ease the transition of storage and bandwidth intensive content; and (v) the City may verify compliance with these policies at any time in consultation with Provider engineers and officers.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, postage prepaid, (ii) delivered personally, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; and addresses for such notice are as follows:

To the City's Authorized Representative:	To Provider:
Carina Walters City Administrator City of Burlington 300 N. Pine St. Burlington, WI 53105 262/342-1161	David Owusu Director of Streaming Swagit Productions, LLC 850 Central Parkway E., Ste 100 Plano, Texas 75074 800/573-3160

Notice shall be deemed given upon receipt by the party to whom it is sent.

5. INDEMNIFICATION

PROVIDER'S INDEMNITY OBLIGATION. PROVIDER COVENANTS, AGREES TO, AND SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE CITY), INDEMNIFY, AND HOLD HARMLESS THE CITY OF BURLINGTON, WISCONSIN AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY OF BURLINGTON, WISCONSIN, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY OF BURLINGTON, WISCONSIN, AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY OF BURLINGTON, WISCONSIN EACH BEING A "BURLINGTON PERSON" AND COLLECTIVELY THE "BURLINGTON PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE CITY OF BURLINGTON, WISCONSIN AND/OR ANY OTHER BURLINGTON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (I) ANY OF THE WORK AND SERVICES OF THE PROVIDER AS DESCRIBED IN SECTION 1 OF THIS AGREEMENT, (II) ANY REPRESENTATIONS AND/OR WARRANTIES BY PROVIDER UNDER THIS AGREEMENT, AND/OR (III) ANY ACT OR OMISSION UNDER, IN PERFORMANCE OF, OR IN CONNECTION WITH THIS AGREEMENT BY PROVIDER, OR BY ANY OF PROVIDER'S

OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, TENANTS, SUBTENANTS, LICENSEE, SUBLICENSEE, CONCESSIONAIRES, OR ANY OTHER PERSON OR ENTITY FOR WHOM PROVIDER IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, PROVIDERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY BURLINGTON PERSON, OR CONDUCT BY ANY BURLINGTON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

PROVIDER SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY BURLINGTON PERSON RELATED TO OR ARISING OUT OF PROVIDER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT PROVIDER'S SOLE COST AND EXPENSE. THE BURLINGTON PERSONS SHALL HAVE THE RIGHT, AT THE BURLINGTON PERSONS' OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING PROVIDER OF ANY OF ITS OBLIGATIONS HEREUNDER. THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATIONS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

6. INSURANCE

Provider and its subcontractors shall procure and maintain in a company or companies lawfully authorized to do business in Wisconsin and until all of their obligations have been discharged and satisfied (and including during any warranty periods under this Agreement), insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services and work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the services and work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form
 (Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

(This coverage must be amended to provide for an each-project aggregate limit of insurance)

2. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

3. Professional Liability \$1,000,000
 (This coverage must be maintained for at least two (2) years after the project is completed; if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this Agreement)

B. OTHER INSURANCE REQUIREMENTS: The foregoing insurance policies shall be endorsed to contain the following provisions:

1. The City of Burlington, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to general liability, including liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider, and automobiles owned, leased, hired or borrowed by the Provider.
2. The Provider's insurance shall contain broad form contractual liability coverage.
3. The City of Burlington, its, officers, officials, agents, employees and volunteers shall be additional named insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
4. The Provider's insurance coverage shall be primary insurance with respect to the City, its, officers, officials, agents, and employees (and must be endorsed to read as primary coverage regardless of the application of other insurance). Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or

volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.

5. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 6. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
 7. The policies shall contain a waiver of subrogation in favor of the City, its officers, officials, agents, and employees.
 8. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City of Burlington.
 9. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Burlington, Wisconsin of any material change in the insurance coverage.
 10. Provider may maintain reasonable and customary deductibles, subject to approval of the City.
 11. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Wisconsin.
- 6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled, or not renewed, except after sixty (60) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

Carina Walters, City Administrator
City of Burlington
300 N. Pine St.
Burlington, WI 53105

- 6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Wisconsin and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency. All insurance must be written on forms filed with and approved by the Wisconsin Department of Insurance.

- 6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement (and update the same as needed to comply with this Agreement). The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Certificates of Insurance shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the City of Burlington.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Carina Walters, City Administrator, City of Burlington, 300 N. Pine St., Burlington, WI 53105.** The City reserves the right to request and receive within ten (10) days, complete copies of all insurance policies (certified to be true and correct by the insurance carrier) required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

- 6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies or Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements and all provisions identified above.
- 6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City's risk manager, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. DEFAULT AND TERMINATION

- 7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:

- 7.1.1 Any material misrepresentation made by Provider to the City;
- 7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:
 - 7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;
 - 7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;
 - 7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;
 - 7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;
 - 7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;
 - 7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
 - 7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this Agreement.

- 7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:
 - 7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;
 - 7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;
 - 7.2.1.3 The right to monetary damages;
 - 7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;
 - 7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.3 Right to Offset. Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

8. GENERAL PROVISIONS

8.1 Headings. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Governing Law and Venue. This Agreement shall be governed by and administered and interpreted under the laws of the State of Wisconsin, without regard to any conflict of laws provisions. Venue for any action, cause or action or proceeding under this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin, and the parties agree to submit to the personal and subject matter jurisdiction of said court.

8.3 Severability. The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.4 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be sold, assigned, pledged,

subcontracted, transferred or otherwise conveyed by any means whatsoever by either the City or Provider without prior written consent of the other, and any sale, assignment, pledge, subcontract, transfer or other conveyance by either party without the other party's prior written consent shall be null and void.

- 8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest.
- 8.7 Authority to Contract. The undersigned officers and/or representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that it has taken all actions necessary to authorize entering into this Agreement.
- 8.8 Integration; Modification. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.
- 8.9 Non-appropriation. If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Agreement at the end of the then current fiscal year, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Provider at least sixty (60) days prior to any termination for non-appropriation of funds and will pay the Provider in accordance with this Agreement through the date of termination of this Agreement.
- 8.10 Subcontractors. This Agreement or any portion hereof shall not be subcontracted without the prior approval of the City. No subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work and service of all subcontractors and any acts and omissions in connection with such performance. Nothing in this Agreement shall, or is intended or deemed to, create any legal, contractual or other relationship between the City and any subcontractor or sub-subcontractor.
- 8.11 No Waiver. The failure by the City to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right,

power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by the City of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies the City may have arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

- 8.12 No Third Party Beneficiaries. This Agreement and all of its provisions are solely for the benefit of Provider and the City and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.
- 8.13 "Includes". For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
- 8.14 Incorporation of Recitals and Exhibits. The Exhibits and Recitals to this Agreement are incorporated herein and made a part hereof for all purposes.

9. DISCLOSURE OF AGREEMENT; INTERLOCAL ARRANGEMENTS.

- 9.1 Disclosure of Agreement Terms. The terms and conditions of this Agreement may be disclosed by either party to other public agencies for the purpose of such other agencies purchasing services under this Agreement pursuant to an interlocal or cooperative arrangement with the City. In addition, Provider may disclose the terms and conditions of this Agreement in an effort to show that the terms offered to another public agency are fair and reasonable or to determine the best value. It is understood that the Provider shall not be precluded from disclosing the terms and conditions of its form of Service Agreement to any other third party at Swagit's sole discretion and for any reason.
- 9.2 Included Parties; Interlocal Agreement. Pursuant to any interlocal, intergovernmental, or other such cooperative agreement with the City, Provider will accept orders from, and will furnish the Provider's Software, Hardware, Professional Services, and Managed Services as outlined in the Proposal to any governmental agency or other public entity authorized by the City to use the Proposal, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules.
- 9.3 Political Subdivision Participation. The Provider agrees to supply, sell, and contract separately with other similar or related political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the City, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules, in an effort to establish the terms and conditions as fair and reasonable.

10. DURATION

This Agreement shall become effective on the last day of execution by the parties, and shall continue in force for an initial term of twelve (12) months, unless sooner terminated as provided above. All pricing is to remain firm during the contract period. Except as otherwise provided in above Paragraph 8.9, this Agreement will automatically renew for additional one-year terms unless this Agreement is terminated by either party providing written notice of its intent to terminate the Agreement to the other party not less than sixty (60) days prior to the end of the then current term.

11. SURVIVAL OF COVENANTS

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12. COUNTERPARTS

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

City of Burlington

Swagit Productions, LLC

Carina Walters, City Administrator

Bryan R. Halley, President

Attest:

City Clerk

Date of Execution:

EXHIBIT A
SCOPE OF SERVICES

Scope of Services – Exhibit A

EASE Solution

Built upon years of industry experience, Extensible Automated Streaming Engine (EASE) is a software framework comprised of foundation and extension modules that work together to automate many otherwise manually intensive tasks. This completely hands-off solution meets the current and future needs of your entity without creating any additional work for clerks or webmasters.

- **Video Capture and Encoding**

EASE Encoder records content according to your broadcast schedule and transfer the recorded audio/video to the Swagit Content Network via a secure Virtual Private Network (VPN) connection, making it available for live and/or on-demand streaming.

- **Indexing and Cross Linking**

Using your published meeting agendas as a guide, Swagit's Managed Service Division (SMSD) index's the meetings without any work from the staff. SMSD will annotate your content by adding jump-to points with specific item headings, giving users the greatest flexibility to find the specific content they need. With these jump-to points, users can step through video by searching for or clicking specific items.

- **Agenda Management Integration**

If meeting packets or other related information is available online, SMSD will link them directly to the video player for easy access.

Swagit's EASE solution integrates with all Document/Agenda Management solutions.

- **Archiving**

Client audio/video can be stored securely on the Swagit Content Network indefinitely. Fault tolerance and high availability is assured through replication of audio/video content to multiple, geographically redundant, Storage Area Networks (SAN). Our standard packages include enough storage for three full years of meetings and special content.

- **Presentation**

By navigating through the video library, users can view a list of meetings chronologically and once in a selected meeting you can unleash the power of the jump-to markers to search for specific points within individual audio/video clips.

- **Delivery**

In order to deliver on-demand content to end users in a format that is native to their computer's operating system, Swagit can deliver content in all major streaming video formats: HTML5, Flash, Windows Media, QuickTime and Real. Swagit is proud to support HTML5 and Flash as its default formats, which has proven itself as the format of choice from such vendors as YouTube, Google Video, Facebook, ABC and NBC/Universal.

EASE Solution

- **Monitoring**

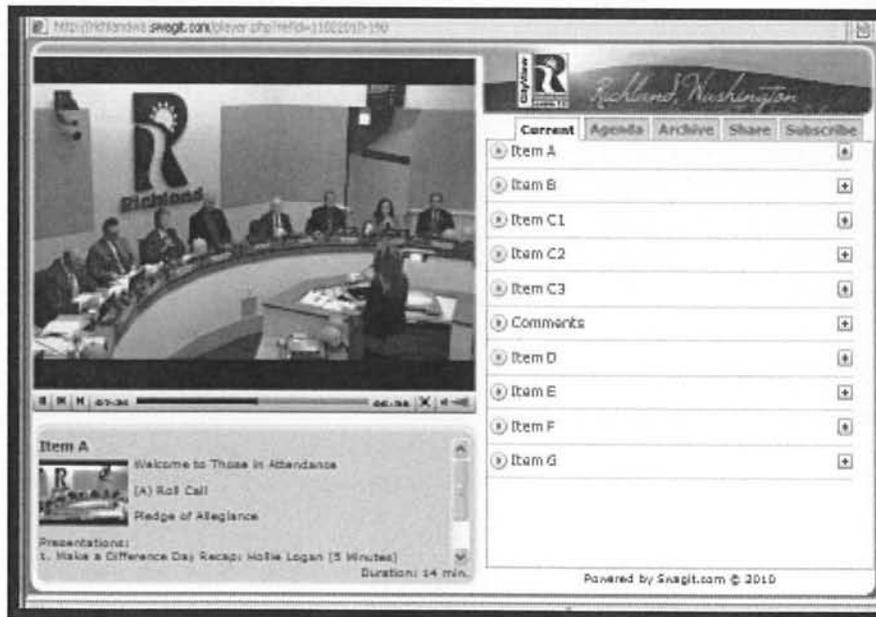
Swagit is monitoring all aspects of the Swagit Content Network to ensure its health and availability. This monitoring extends to cover remote Swagit EASE Encoders deployed on client premises. In the rare event of trouble our engineers are promptly notified so that they may dispatch a swift response in accordance with our support procedures.

- **Statistics**

Swagit collates log files from our streaming servers monthly and processes them with the industry recognized Google Analytics. Google Analytics generates reports ranging from high-level, executive overviews to in depth quality of service statistics. These reports help to highlight growth trends and identify popular content.

- **Support**

Beyond our proactive monitoring and response, Swagit offers ongoing, 24/7 technical support for any issues our clients may encounter. While our choice of quality hardware vendors and a thorough pre-installation testing phase go a long way toward ensuring trouble free operation of our EASE Encoders, we do recognize that occasionally unforeseen issues arise. In the event that our engineers detect a fault, they will work to diagnose the issue. If necessary, next business day replacement of parts will be completed. Swagit offers continual software updates and feature enhancements to our services and products for the life of your managed services contract.



Investment-Streaming Video

Streaming Video Hardware

Item Description	Type	Up-front Cost
Hardware/Software/Provisioning	1U	\$8,750.00
Swagit Basic EASE Encoder, Osprey-260e Video Capture Card with Simulstream Software, Microsoft Windows OS, OS Installation, Swagit EASE Tools and Licenses, Encoder Software Installation, System Burn-in, Branded Video Library Design, Branded Player Design, Rackmount Kit, AgendaQuick (see page 4) - Agenda, Minutes, Term Tracker Module Licenses and Remote Installation.		

Streaming Video Monthly Managed Services

Item Description	Monthly Cost
Package 2: Up To 50 Indexed Meetings per year (EASE) - Includes Media On-Demand, 24/7 Live Stream and up to 120 hours of additional specialty content per year (No staff involvement—Hands Free).	\$645.00

Optional Services/Overages/Individual Pricing

Item Description	Cost
Each Additional Indexed On-Demand Meeting	\$150.00
Programming, Development or Design Implementation	\$120.00/hour

AgendaQuick: Web-based agenda software system and Swagit Video Integration

Schedule A - Software & Services

Item	Availability	Description
Agenda & Minutes Modules	Included	AgendaQuick Core System SaaS
Task Tracker Module	Included	AgendaQuick System SaaS
Term Tracker Module	Included	AgendaQuick System SaaS
Installation and Online Training	Included	Training via webinar
Video Integration with Swagit	Included	Integration necessary to sync the two systems and your website
Onsite Training and Travel	Optional (\$2,500)	Optional, 1 (2-day) onsite training for AgendaQuick (Each additional training session \$ 1,100 per day)

Schedule B

Software License, Maintenance & Service Fee Schedule	
Description of Services	<ul style="list-style-type: none"> • Customer Training and Program Documentation for AgendaQuick • Customer Support for Software Listed in Schedule "A" • Free Updates, if applicable, to Software Listed in Schedule "A"
Term of Agenda Software License	One year from effective date with automatic annual renewals unless terminated by either party per agreement terms
AgendaQuick Annual License & Maintenance Fee	First Year included with purchase, \$4,200 annually Beginning Year 2

AgendaQuick Software License & Service Agreement

Effective Date: 01-01-16

THIS AGREEMENT between Swagit Productions, LLC ("Licensor"), 850 Central Parkway E., Suite 100, Plano, TX 75074; and the City of Burlington, Wisconsin ("Licensee"), of 300 N. Pine St., Burlington, WI 53105.

WHEREAS:

- (A) This Agreement is a license and service agreement and not an agreement for the sale of software.
- (B) This Agreement gives Licensee limited rights to use the Software and Related Materials described below and imposes upon Licensee certain obligations to protect the Software and Related Materials from unauthorized use, reproduction, distribution or publication.
- (C) This Agreement imposes upon Licensor certain obligations to provide customer service in regard to the ongoing maintenance of Software and Related Materials described below.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** In this Agreement the following words and phrases shall have the following respective meanings, unless the context otherwise requires:
 - (a) "**Confidential Information**" means proprietary material or information belonging to Licensor, or to any third party to which Licensor owes a duty to maintain confidentiality, directly or indirectly placed by Licensor, or by third parties to which Licensor is related, into the possession of Licensee which material or information is not generally available to or used by others (except other persons whom Licensor has granted licenses of the Software and Related Materials or part thereof) or the utility or value of which is not generally known or recognized as standard practice, whether or not the underlying details are in the public domain, and includes, without limitation, all business information, computer software and computer technology, whether patentable or not, which is acquired by or on behalf of Licensee from time to time and which, owing to the relationship between Licensor and Licensee, may become known to Licensee.
 - (b) "**Copyrights**" shall refer to those copyrights or copyright registrations for the Software or the Software and Related Materials and shall include future copyrights belonging to Licensor or any third party related to Licensor for improvements and modifications thereof and applications by Licensor for registration of copyrights for improvements and modifications thereof;
 - (c) "**Enhancements**" means changes and/or improvements to the Software, whether arising out of the particular Software configuration for the specific use of Licensee

or otherwise;

- (d) **"Errors"** means, with regard to the Software, incorrect source code or object code or anything not in agreement with published Specifications or requested modifications;
- (e) **"Know-How"** includes all technology, source code, object code, local area network manager code, technical information, procedures, processes, trade secrets, methods, practices, techniques, information, logic/flow charts, sketches, drawings, Specifications, application and modification manuals and data relating to the design, manufacture, production, inspection, and testing of the Software, which are from time to time in Licensor's possession;
- (f) **"Manuals"** means the programmer's manuals, the technical manuals and the user manuals and other similar documentation;
- (g) **"Modifications"** means Enhancements and/or correction of Errors, and Modifications shall be deemed to have been accepted by Licensee upon the lapse of sixty (60) days following successful installation of any Modifications unless Licensee notifies Licensor in writing prior to the lapse of such period that the Modifications in question do not conform to Specifications;
- (h) **"Related Materials"** means all of the printed materials, user documentation, training documentation and confidential activation code for the Software supplied by Licensor to Licensee, and includes the Manuals;
- (i) **"Service"**, which means consulting time, providing technical information and or assistance in the ongoing maintenance of the Software;
- (j) **"Software"**, which includes the Know-How and, unless otherwise hereinafter set out to the contrary, any Modifications, is described on Schedule "A" herein and includes all actual copies of all or any portion of the computer programs delivered by Licensor to Licensee, inclusive of backups, updates and merged copies either permitted by this Agreement or supplied subsequently by Licensor or any party related to Licensor; and
- (k) **"Specifications"** means the functional performance parameters of the Software.

2. **Grant of License and Reservation of Ownership.** Licensor hereby grants to Licensee a personal, non-exclusive, non-transferable license to use the Software and Related Materials at the site referred to in **Schedule "A"** hereto and otherwise pursuant to the terms of this Agreement. Licensee agrees to use its best efforts to protect the Software and Related Materials from unauthorized use, reproduction, distribution or publication.
3. **License & Service Fee.** In consideration for the granting of the license of the Software and Related Materials to Licensee, and for the providing by Licensor of service, as defined in **Schedule "B"**, Licensee hereby agrees to pay to Licensor a license & service fee, as defined in **Schedule "B"**. Licensee shall also pay to Licensor all sales, excise and other taxes thereon and upon any other amounts payable by Licensee to Licensor pursuant to this

Agreement.

4. **Copyrights.**

- (a) The Software and Related Materials are owned by Licensor and are protected by U.S. copyright laws and applicable international treaties and/or conventions. Without limiting the prohibition on assignment contained elsewhere in this Agreement, Licensee acknowledges that its rights to use the Software and Related Materials are personal to Licensee. Licensee therefore covenants not to permit the use of the Software and Related Materials by unauthorized persons and to use its best efforts to prevent the exportation of the Software and Related Materials or any portion thereof into any country which does not have copyright laws that will protect Licensor's Copyrights.
- (b) Licensor, at its own expense, will defend and indemnify Licensee from all claims that the Software and Related Materials infringe a United States of America copyright, provided that Licensee gives Licensor prompt written notice of such claims and permit Licensor to defend or settle the claims and provides Licensor with all reasonable co-operation and further provided that Licensor shall not be required to defend and indemnify Licensee from infringement claims resulting from Modifications by Licensee.
- (c) As to any Software and Related Materials which are or in the opinion of Licensor may become subject to a claim of infringement, Licensor, at its option, will obtain the right for Licensee to continue using the Software and Related Materials or replace or modify the Software and Related Materials so as to make it non-infringing. If none of the aforementioned alternatives are available on commercially reasonable terms, then Licensee agrees to return the Software and Related Materials to Licensor upon Licensor's written request and Licensor shall, upon return, refund to Licensee all license fees paid by Licensee to Licensor, and Licensor shall have no other or further liability to Licensee. Licensee acknowledges that the remedies set out in paragraph 11 hereof constitute the sole and exclusive remedy of Licensee for copyright infringement.

5. **Permitted Uses of the Software and Related Materials.** As each configuration of central processing units and/or networked systems may be unique, Licensee agrees to restrict Licensee's use of the Software to the particular Software configuration licensed by Licensor to Licensee. Said configuration is incorporated into this license agreement by reference, inclusive of Modifications created or approved by Licensor. Licensee may make one (1) copy of the Software for archival purposes only, unless Licensor agrees otherwise in writing.

6. **Uses Not Permitted.** Licensee covenants and agrees that it will not:

- (a) whether in whole or in part, sell, rent, lease, sublease, license, sublicense, lend, time-share, transfer, assign or provide the use of or access to the Software and Related Materials, or any portion thereof, to unlicensed persons;
- (b) assign, mortgage, charge or otherwise encumber either the Software and Related

Materials or its rights under this Agreement;

- (c) reverse engineer, decompile or disassemble the Software;
 - (d) alter, modify or create any derivative works of the Software and Related Materials or any portion thereof, except as needed for Licensee's own use of Software;
 - (e) except as permitted elsewhere in this Agreement, make additional copies of the Software and Related Materials or any portion thereof;
 - (f) obscure or remove any copyright or trademark notices.
7. **Assignment.** Without limiting anything contained elsewhere in this Agreement, Licensee shall not assign this Agreement or any rights herein without the prior written consent of Licensor, which consent may be arbitrarily withheld. Any purported assignment without Licensor's consent shall be deemed to be null and void.
8. **Term.** The license granted by this Agreement shall commence on the date of this Agreement and shall continue for a period of one year thereafter. This Agreement shall be automatically renewed at the end of the one year period unless Licensee requests termination, in writing, 30 days prior to the end of the period. Notwithstanding the foregoing, this Agreement will terminate automatically without notice if Licensee fails to comply with any provision of this Agreement. The parties agree that all provisions set out in this Agreement for the protection of Licensor and its Copyrights shall remain in force notwithstanding termination of this Agreement.
9. **Updates.** Provided that Licensee is in compliance with the terms and conditions of this Agreement, Licensor agrees to make available to Licensee all updates, improvements and enhancements for the Software. Nothing herein shall be construed or interpreted as requiring Licensor to develop any such updates, improvements or enhancements.
10. **Limited Warranty.**
- (a) Licensor warrants that the Software, as defined in **Schedule "A" and, any additional Software, as defined in future revisions to Schedule "A"**, without Modifications, will substantially conform to the Related Materials for a period of one (1) year from the date of receipt by Licensee. Licensor warrants that the media upon which the Software is provided and the Related Materials will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt by Licensee.
 - (b) **LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND RELATED MATERIALS. SOME JURISDICTIONS DO NOT ALLOW THE**

EXCLUSION OF IMPLIED WARRANTIES OR THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE FOREGOING EXCLUSIONS MAY NOT APPLY TO COMPANY. COMPANY MAY HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

- (c) During the warranty period, Licensor's entire liability and Licensee's exclusive remedy shall, at Licensor's option, be one of the following:
 - (i) Licensor may attempt to correct or work around Errors;
 - (ii) Licensor may replace the Software and Related Materials;
 - (d) Licensor shall not be liable for damages, direct or indirect, special, incidental, consequential, punitive or exemplary, related to Licensee's use of the Software and Related Materials, even if Licensor is advised of the possibility of such damage.
11. **Confidentiality.** Except as may be otherwise required of Licensee under the laws of the State of Wisconsin (including, but not limited to, Wisconsin's Open Records Laws), all Confidential Information, including the Know-How, shall be treated as confidential by Licensee and shall be used solely to enable Licensee to use the Software in accordance with this Agreement. Nothing contained herein shall prevent Licensee from making disclosure of any of the Confidential Information to any employee of Licensee for the sole purpose of utilizing the Software and Related Materials in accordance with this Agreement, provided that Licensee shall obtain from each employee to whom such disclosure is made a covenant of non-disclosure.
12. **No Implied Waiver.** No failure or delay by Licensor in enforcing any right or remedy in this Agreement shall be construed as a waiver of any future exercise of such right or remedy by Licensor.
13. **Conflict of Documents.** Any conflict between the terms of this Agreement and any purchase order or other document in relation to the license granted hereby shall be resolved in favor of the terms of this Agreement.
14. **Equitable Relief.** Licensee acknowledges that any breach by it of any of the terms of this Agreement is likely to result in irreparable harm or damage to Licensor and that, in the event of such breach, in addition to any and all remedies at law, Licensor shall have the right to obtain an injunction, specific performance or other equitable relief to prevent the continuous violation of the terms of this Agreement.
15. **Governing Law.** This Agreement shall be governed, controlled, and construed by and under the laws of the State of Wisconsin, without regard to any conflict of law provisions.
16. **Forum.** This agreement, including its payment obligation, is performable in Racine County, Wisconsin and venue for all actions in connection with this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.