

SPECIAL TOWN BOARD MEETING FOR THE TOWN OF EUREKA, December 27th, 2017

A Special Town Board Meeting of the Town of Eureka was called to order by Chairman Gene Krull at 4:00 p.m. on December 27th, 2017 at the Eureka Town Hall.

Proper notice was given as the agenda was posted at the Eureka Town Hall and on the Town's Website December 21th and 22th along with e mail notice to those individuals on our e mail list.

Present by roll call were Chairman Gene Krull, Supervisors: Janet Krueger, Bill Maassen, Don Anderson, Randy Clark and David Anderson, Town Clerk. Guests present were Richard Nelsonand Philip Staley.

**Maassen/Krueger motion** to approve the Public-Private Partnership Agreement with Lakeland Communications. Unanimous roll call vote 5 ayes 0 nays, **motion carried**.

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PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

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This Public-Private Agreement (the "**Agreement**") is made this 20th day of December 2017, by and between the Township of Eureka, Wisconsin, a political subdivision of the State of Wisconsin (the "**Township**") and Lakeland Communications Group, LLC a Wisconsin limited liability company ("**Lakeland Communication**"). The Township and Lakeland Communications are individually referred to herein as "**Party**," and collectively as the "**Parties**."

**RECITALS**

**WHEREAS**, the Township desires to help provide access to resources and support structure necessary to promote the development of broadband services to unserved and underserved areas within its boundaries in order to enhance economic and social development;

**WHEREAS**, The Township has request Lakeland Communications to expand it broadband facilities into the Township for the purpose of serving unserved and underserved residences and businesses within the Township boundaries.

**WHEREAS**, Lakeland Communications proposes to expand its broadband facilities to make high speed broadband and related broadband service available to current unserved and underserved residences and businesses within the Township where such service is unavailable or is prohibitively expensive (the "**Project**");

**WHEREAS**, the Township believes the Project is in the public interest of the residents and businesses located within the Township;

**WHEREAS**, the Parties intend that Lakeland Communications, with the Township as its public partner, apply to the State of Wisconsin Broadband Expansion Grant Program in January 2018, pursuant to Wis. Stat #196.504 (the "**Grant Program**"), to obtain a grant to assist with the cost of the Project; and

**WHEREAS**, to further support the application for a broadband grant and the goal of bringing high-speed broadband and related broadband services to unserved and underserved residences and businesses within the Township, the Township and Lakeland Communications enter into this Agreement.

**NOW, THEREFORE**, it is hereby agreed by and between the Parties as follows:

1. **Recitals.** The above set forth recitals are true and correct and are incorporated herein as through set forth in their entirety.
2. **Obligations of Township.** The Township shall:
  - a. provide in-kind assistance to the Project in the form of waived fees and expenses for obtaining permits or permissions required from local government and impose no fees on services offer to residents or businesses such as video franchise fees;

- b. without a fee or charge of any kind, grant Lakeland Communications as easement on, under, and across Township property to construct, install, connect, operate, maintain, inspect, test, upgrade, enlarge, repair, replace, and disconnect equipment and facilities for the provision of broadband services constructed pursuant to the Project and extensions thereof;
    - c. grant Lakeland Communications and its contractor permission to access Township property to engage in activities to construct the Project in compliance with all existing rules and regulations;
    - d. provide administrative support and resources in support of the Project including facilitation of communication and contact with property owners in the Township to procure easement for the Project;
    - e. provide communication, marketing, education, and outreach to residents and businesses in the Township regarding the Project as well as the associated cost and benefits of the Project;
    - f. no later than December 31st, 2017 enact an ordinance that complies with Wis. Stat. # 196.504(5);
    - g. no later than December 31st, 2017 file a complete application for certificate as a Broadband Forward! Community under Wis. Stat. # 196.504(4);
    - h. reimburse Lakeland Communications for the cost to move or relocate (whether on a temporary or permanent basis) Lakeland Communication's equipment and facilities used for the provision of broadband services constructed pursuant to the Project or any extensions thereof, where such move or relocation is request by the Township or its contractors or agents; and
    - i. reimburse Lakeland Communications for the cost of repairs and replacement of its equipment and facilities used for the provision of broadband services construct pursuant to the Project or any extensions thereof, where the need for such repair or replace was caused by the acts or omissions of the Township or its contractors or agents.
- 3. **Project Ownership.** At all times, Lakeland Communications shall have sole ownership of the Project and extensions thereof, shall be solely responsible for the construction operations, and maintenance of the Project and extension thereof, and shall be solely entitled to revenue generated by providing services using the facilities constructed under the Project and extensions thereof.
- 4. **Records.** Lakeland Communications will maintain and be the custodian of all records associated with the administration and performance of this Agreement and will make those records available to the Township upon request. Lakeland Communications shall provide the Township with a copy of its application to the Grant Program at the same time the application is submitted to the Public Service Commission of Wisconsin.
- 5. **Termination.** This agreement shall become on the first date written above and shall terminate:
  - a. **In the event that Lakeland Communications' grant** application filed in January 2018 is unsuccessful, or it receives less than the amount requested from the Grant Program; or
  - b. Upon mutual agreement of the Parties.
- 6. **Authority.** Each Party represents and warrants to the other Party that: (a) it has the right, power and authority to enter into and perform its obligations under this Agreement; and (b) the person executing this Agreement on its behalf has been duly authorized to bind said Party hereto.
- 7. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the rest of the Agreement will remain in full force and effect and will not be affected unless removal of that provision results in a material change to this Agreement. If a material change occurs as a result of action by a court, the Parties will negotiate in good faith for replacement language that must closely effectuate the unenforceable provision.
- 8. **Entire Agreement; Amendments.** This Agreement and the Exhibits referenced herein contain all agreements, promises, warranties, representations and understandings between the Parties regarding the subject matter hereof, and supersede all prior oral or written agreements, promises, warranties, representations or understandings between the Parties and shall constitute the entire agreement between the Parties regarding the subject matter hereof. Any additions, variation, modifications or amendment to this Agreement will be null, void and ineffective unless made in a writing signed by both parties.
- 9. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to conflict of law provisions.
- 10. **Counterparts.** This Agreement may be executed in counterparts, including via facsimile or other electronic means, each of which will be deemed an original and all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF,** THE Parties have executed this Agreement, effective as of the date first set forth above.

**Krueger/Anderson motion** to approve Ordinance 17-3. An Ordinance Relating to the Approval of Broadband Network Projects. Unanimous roll call vote 5 ayes 0 nays, **motion carried.**

**TOWN OF EUREKA**

**Polk County, Wisconsin**

**ORDINANCE NO 17-3**

**An Ordinance Relating to Approval of Broadband Network Projects**

**Chapter 1. Broadband Network Project Applications**

**SECTION 1.GENERAL PROVISIONS.**

- 1.1 Purpose and policy. The purpose of this chapter is to encourage the development of broadband access in the Town of Eureka by reducing administrative obstacles to broadband service providers and coordinating the review of applications to ensure such applications are timely processed. This chapter shall at all times be construed consistent with the aforesated purpose.
- 1.2 **Definitions.** In this chapter:
  - (1) "Applicant" means a person applying for a permit for a broadband network project.
  - (2) "Broadband network project" means the construction or deployment of wireline or wireless communications facilities to provide broadband communications services in the Town of Eureka.
  - (3) "Permit" means any local permit, license, certificate, approval, registration, or similar form of approval required by policy, administrative rule, regulation, ordinance, or resolution with respect to a broadband network project.
  - (4) "Written" or "in writing" mean information that is inscribed on a tangible medium or that is stored in an electronic or other intangible medium and is retrievable in perceivable form.
- 1.3 **Point of contact.** The Town of Eureka shall appoint a single point of contact for all matters related to a broadband network project. The Town of Eureka shall provide on its public website the contact information, including the e-mail address, for the point of contact authorized to receive a broadband network project application.

**SECTION 2.ELECTRONIC SUBMISSION OF APPLICATIONS.** An applicant may sign and file all forms, applications and documentation related to a broadband network project electronically.

**SECTION 3.REVIEW OF APPLICATIONS.** Notwithstanding any other provision in the Town of Eureka ordinances, resolutions, regulations, policies or practices to the contrary, the following process shall apply exclusively upon receiving a broadband network project application.

**3.1 Completeness review.** Upon receiving a broadband network project application the Town of Eureka shall:

- (1) Determine whether an application is complete and notify the applicant of the determination by the Town of Eureka in writing with 10 calendar days of receiving an application. If the Town of Eureka does not notify the applicant in writing of its completeness determination with 10 calendar days of receiving the application, the application shall be considered complete.
- (2) If the Town of Eureka determines that an application is not complete, the written notification to the applicant shall specify in detail the required information that is not complete. The applicant may resubmit an application as often as necessary until the application is complete.

**3.2 Approval or denial of complete applications.**

(1) Within 60 calendar days of receiving an application that is complete, or considered complete under sub. (1), the Town of Eureka shall approve or deny the application and provide the applicant written notification of the approval or denial. If the Town of Eureka does not notify the applicant of its approval or denial within 60 calendar days of receiving a complete application, the application shall be considered approved and any required permit shall be considered issued.

(2) If the Town of Eureka denies an application, the written notification of the denial under sub. (1) shall include evidence that the denial is not arbitrary and capricious.

**SECTION 4.FEES.** Any fees imposed by the Town of Eureka to review an application, issue a permit, or perform any other activity related to a broadband network project shall be reasonable. An application fee that exceeds \$100 is unreasonable.

**SECTION 5. INITIAL APPLICABILITY.** The treatment of this ordinance first applies to applications received by the Town of Eureka on or after the effective date of this ordinance.

**SECTION 6. EFFECTIVE DATE.** This ordinance takes effect on the day of publication.

Adopted this 27th day of December 2017

**Anderson/Krueger motion** to adjourn. Meeting adjourned at 4:40 p.m.

Minutes prepared by David Anderson, Eureka Town Clerk