

MIFFLINBURG AREA SCHOOL DISTRICT

SPECIFICATIONS

Fiber Optic Cable Installation

Mifflinburg Area School District

Bid Due Date
February 28, 2018
3:00 p.m.

Mifflinburg Area School District
Administration Building
178 Maple Street
Mifflinburg, PA 17844

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Request for Bids

The Mifflinburg Area School District is accepting bids for the *installation of fiber optic cable*. Please be advised that the District has extended the due date for receipt of bids until **Wednesday, February 28, 2018 at 3:00 p.m.** Bids will be received at the Mifflinburg Area School District Administrative Offices, 178 Maple Street, Mifflinburg, PA 17844 to the attention of Mr. Thomas R. Caruso, Business Administrator. Bids must be submitted on forms provided by the school district or obtained through the district website in an envelope sealed and clearly labeled *Fiber Optic Bid*. The specifications and general conditions, scope of work, and bid forms can be obtained via the district website or by contacting the Mifflinburg Area School District Administrative Offices, 178 Maple Street, Mifflinburg, PA 17844 (570) 966-8200. The Mifflinburg Area School District reserves the right to accept or reject any bids.

(1/27, 2/3, 2/10)

**Mifflinburg Area School District
Request for Bids**

“Fiber Optic Cable Installation”

Bid Form

Vendor Name _____

Address _____

Phone Number _____

Name of Person Submitting Bid _____

(Please Print)

Total Bid Cost \$ _____

The undersigned is acquainted with the actual conditions and requirements of the work. The vendor further declares that he has examined and understands the scope of work and general conditions and all other documents provided including adherence to the Pole Licensing Agreement between the Mifflinburg Area School District and the Borough of Mifflinburg.

Signature _____

Date _____

- The prospective vendor must provide at least 3 customer references with their bid.
- The Mifflinburg Area School District reserves the right to accept or reject any or all bids.
- Bids are **due by 3:00 p.m. Wednesday, February 28, 2018**

To: Mr. Thomas R. Caruso, Business Administrator
District Administrative Office
178 Maple Street
Mifflinburg Pa. 17844

MIFFLINBURG AREA SCHOOL DISTRICT

Scope of Work, Instructions to Bidders and Products to be Used for Fiber Optic Cable Installation

The Mifflinburg Area School District (MASD) is seeking bids for Fiber Optic Cable Installation.

The scope of work and general conditions are as follows:

1. Supply and install one ¼" EHS galvanized, 7 strand, manufactured U.S. steel aerial support cable for the lashing of a new Corning 24-Single Mode Fiber to new messenger.
2. All pole line hardware to be galvanized steel, with stainless steel lashing wire to over-lash cable to messenger, all road crossings will be double lashed. All pole line hardware to be galvanized steel, made in USA if possible, some hardware comes from China, less than 20%.
3. Supply and install custom Fiber optic cable markers at each pole for identification as required by utilities.
4. The proposed Fiber optic cable run will be from the Administration building to the Elementary School, (approx. 4500 feet) using existing poles owned by Mifflinburg Borough. All work performed shall be completed in accordance with and pursuant to the terms of the Pole Licensing Agreement between the Mifflinburg Area School District and the Borough of Mifflinburg – Appendix B to the General Conditions. The majority of the installation area can be viewed on the aerial map provided in Appendix A to the General Conditions.
5. All 24 strands will be terminated in a rack mounted patch panel at both ends with LC single mode connector panels and LC single mode Corning Pretium Unicam factory polished connectors.
6. All fiber strands to be tested to Tier 1 and Tier 2 testing parameters which are light source power meter and OTDR (Optical Time Domain Reflectometer).
7. Customer to supply patch cords and all electronic devices.
8. The bid should be based on existing underground duct bank free of obstructions.
9. Pole line make ready completed by Vendor in accordance with and pursuant to the terms and agreements within the Pole Licensing Agreement between the Mifflinburg Area School District and the Borough of Mifflinburg.
10. Vendor must coordinate with the Borough of Mifflinburg to secure R.O.W Agreements to allow access to properties to install cable.

11. In order to ease installation and reduce costs of the cabling and hauling of materials, the Vendor may request permission to use 4-wheel drive ATV's on R.O.W. included properties contingent upon authorization.
12. The Vendor must demonstrate that it has sufficient labor and equipment to provide the services as outlined in the Request for Bid.
13. The Vendor must include proof of general liability insurance coverage of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate. The Vendor's policy should include the Mifflinburg Area School District as an additional insured and provide a Waiver of Subrogation in favor of the Mifflinburg Area School District. The Vendor's general liability aggregate limit should be on a "per project" basis.
14. The Vendor must provide proof of workman's compensation coverage. The Vendor's workers' compensation policy should include a Waiver of Subrogation in favor of the Mifflinburg Area School District.
15. The Vendor may review the scope of work area by contacting Mr. Justin Haynes, (MASD) Information Technology Services (IT) Coordinator at 570-966-8200.
16. The Vendor agrees that the (MASD) Information Technology Services (IT) Coordinator shall have the authority to determine that the work is properly done and may direct the Vendor to redo any work that is not completed at the Vendor's expense.
17. Pennsylvania law prohibits use of tobacco, drugs and alcohol on public school property and the Vendor must strictly enforce these requirements amongst its staff.
18. All Vendor personnel are NOT permitted in the buildings or in any areas where there are children present.
19. All Vendor personnel must have uniforms or visible ID badges that identify them as the Vendors' employee.
20. The approved Vendor must provide current child abuse clearance, current background clearance and current FBI Federal Criminal History Record Check for all of its employees who will be working on school property.
21. No part of the work may be subcontracted to individuals or other companies.
22. The Vendor shall provide all necessary labor, materials, supplies, equipment, and safety devices to do the required work. The Vendor may not borrow MASD labor, equipment or materials.
23. MASD reserves the right to stop any work it deems to be unsafe.
24. The Vendor must provide at least 3 customer references to be included with a bid submission.

25. The Vendor agrees to provide monthly itemized invoices for goods and services to the Mifflinburg Area School District.

26. The Mifflinburg Area School District reserves the right to accept or reject any or all bids.

End of Scope of Work and General Conditions

FIBER OPTIC CABLE INSTALLATION

GENERAL CONDITIONS

1.01 DESCRIPTION

The project consists of Fiber Optic Cable Installation in the Mifflinburg Area School District. The majority of the installation will be performed on aerial utility poles that are owned by and within the property right-of-way in the Borough of Mifflinburg. The Borough of Mifflinburg and the Mifflinburg Area School District have entered into a Pole Licensing Agreement, and the successful vendor will have to adhere to its terms and conditions. The successful bidder should be prepared to perform and have this work completed between June 5, 2018 and August 15, 2018.

1.02 EXTENT OF WORK

Provide all labor, material, tools, equipment, supervision and municipal permits as required and necessary to complete the work.

1.03 USE OF THE PREMISES

Mifflinburg Area School District will provide Vendor a location for storing equipment and materials if necessary. Due to the nature of the work being performed and the areas within which certain poles are located, all work shall be in accordance with the Borough of Mifflinburg's Ordinances and pursuant to the terms and agreements within the Pole Licensing Agreement between the Mifflinburg Area School District and the Borough of Mifflinburg.

1.04 EXISTING CONDITIONS

If discrepancies are discovered between the existing conditions and those noted on the drawings or aerial map of the service area included at Appendix A, immediately notify the owner's representative, Mr. Justin Haynes, by phone at (570) 966-8206.

1.05 PRE-INSTALLATION INSPECTION

Prior to bid submittal, the vendor should schedule a job site inspection to observe actual conditions and verify all dimensions of the areas. The job site inspection may occur by contacting Mr. Justin Haynes, telephone number at (570) 966-8206, the owner's representative to coordinate an appropriate time.

1.06 TEMPORARY FACILITIES AND CONTROLS

A. Temporary Sanitary Facilities: Sanitary facilities will not be available at the job site.

B. Building/Grounds Site:

1. The fiber optic cable vendor shall use reasonable care and responsibility to protect

the building/grounds and site against damages. The vendor shall be responsible for the correction of any damage incurred as a result of the performance of the contract.

2. The fiber optic cable vendor shall remove all debris from the job site in a timely and legally acceptable manner so as to not detract from the aesthetics or the functions of the building/grounds.

- C. Security: Obey the owner's requirements for personnel identification, inspection and other security measures.

1.07 JOB SITE PROTECTION

- A. The fiber optic cable Vendor shall adequately protect building, paved areas, service drives, lawn, shrubs, trees, etc. from damage while performing the required work. Provide necessary for protection and remove protection material at completion. The Vendor shall repair or be responsible for costs to repair all property damaged during the fiber optic cable installation.
- B. Remove all traces of piled bulk materials and return the job site to its original condition upon completion of the work.

1.08 SAFETY

The fiber optic cable Vendor shall be responsible for all means and methods as they relate to safety and shall comply with all applicable local, state and federal requirements that are safety related. **Safety shall be the responsibility of the fiber optic cable Vendor.** All related personnel shall be instructed daily to be mindful of the full time requirement to maintain a safe environment for the facility's occupants including staff, visitors, customers and the occurrence of the general public on or near the site.

1.09 WORKMANSHIP

- A. Applicators installing the fiber optic cable and related work shall be trained and approved by the company they are representing.
- B. All work shall be of highest quality and in strict accordance with the published specifications and to the building owner's satisfaction.
- C. There must be a supervisor on the job site at all times while work is in progress.

1.10 CASH ALLOWANCES

Cash allowances are prohibited.

1.11 DISCRIMINATION PROHIBITED

Each contract entered into by a government agency for the construction, alteration or repair of any public building or public work shall contain the following provisions:

- A. In the hiring of employees for the performance of work under the contract, no Vendor or any person acting on behalf of the Vendor shall by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. No Vendor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of gender, race, creed, or color.
- C. The contract may be canceled or terminated by the government agency and all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of that portion of the contract.

1.12 HUMAN RELATIONS COMPLIANCE (Act 222)

The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L.744) (43 P.S. Section 951, et. seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap, or disability, by employers, employment agencies, labor organizations, Vendors and others. The Vendor shall agree to comply with the provisions of this Act as amended that is made part of this specification. Your attention is directed to the language of the Commonwealth's non-discrimination clause in 16 PA. Code 49.101.

1.13 STANDARD OF QUALITY

The various materials and products specified in the specifications by name or description are given to establish a standard of quality and of cost for bid purposes. It is not the intent to limit the bidder, the bid or the evaluation of the bid to any one material or product specified but rather to describe the minimum standard. A bid containing an alternative which does not meet the specification may be declared non-responsive. A bid containing an alternative may be accepted but, if an award is made to that bidder, the bidder will be required to replace any alternatives which do not meet the specifications.

1.14 DOMESTIC STEEL AND CAST IRON PRODUCTS

In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, if any steel or steel products are to be used or supplied in the performance of the contract, only those produced in the United States as defined therein shall be used or supplied in the performance of the contract or any subcontracts there under.

In accordance with Act 161 of 1982, cast iron products shall also be included and produced in the United States. Act 141 of 1984 further defines "steel products" to include machinery and equipment. The act also provides clarifications and penalties.

1.15 AHERA

This Vendor shall be responsible to report any questionable discovery of asbestos uncovered or molested by this construction and stop progress on the work until proper authorities can be notified and a plan of action made to handle the material as set forth by the Public Law 99-519.

1.16 PENNSYLVANIA ACT 151/ACT 34

Pennsylvania Act 151/ Act 34 shall be strictly followed in performance of work under this contract. These Acts require employees of the Vendor to undergo background checks.

The successful bidder shall be required to submit required clearances for all workmen on site, prior to starting any work.

Required forms are available from the School District Business Office or from the Pennsylvania State Police.

All costs are the responsibility of the Vendor.

1.17 TAXES

Unless a valid exemption or exclusion exists, Vendor shall bid and shall purchase as excluded from Pennsylvania Sales and Use Tax all Building Machinery and Equipment as defined by the Pennsylvania of Revenue in accord with Act 45 of 1998. Owner will not provide a tax exemption certificate to any Vendor, material supplier or other entity in assisting in making tax-exempt purchases.

The Vendor hereby accepts and assumes exclusive liability for and shall defend, indemnify, protect and hold harmless the Owner from and against the payment of:

- A. Contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, the Federal Social Security Act, Federal, State, County and Municipal Tax Withholding Laws, or any other laws, measured upon the payroll of or required to be withheld from employees, by whomever employed, engaged in the Work.
- B. Sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or other law to be paid or collected by the Vendor or any of its vendors or any other person acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials equipment, supplies, labor, services or other items for or in connection with the Work.
- C. Pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by whomsoever employed, engaged in the Work.

1.18 PERMITS, FEES, AND NOTICES

The Vendor shall comply with, and perform its Work in accord with all applicable laws, statutes, ordinances, lawful orders of governmental authorities, building codes, and rules and regulations, unless the Contract Documents require a higher or greater standard, in which case the Vendor shall conform to such higher or greater standard. It shall be the obligation of the Vendor to review the Contract Documents and to determine and to notify the Owner of any discrepancy between building codes and regulations of which the Vendor has knowledge or should be reasonably able to determine.

The Vendor shall not violate any zoning, setback or other requirements of applicable laws, codes and ordinances, or of any recorded covenants of which the Vendor has knowledge. If the Vendor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, the Vendor promptly shall notify the Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

1.19 INDEMNIFICATION

To the fullest extent permitted by law, the Vendor shall indemnify and hold harmless the Owner, and consultants, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to, attorneys, fees and defense costs, arising out of or resulting from performance of the Work, but only to the extent caused in whole or in part by the acts or omissions of the Vendor, or anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. The Vendor agrees to and does hereby assume on behalf of the Owner the defense of any action at law or in equity which may be brought against such indemnities, upon their demand, the amount of any judgment that may be entered against such indemnities in any such action. In the event that any such claim, loss, cost, expense, liability, damage or injury arises or is made, asserted, threatened against the Owner for which the Vendor or its insurer does not admit coverage, or if the Owner reasonably determines such coverage to be inadequate, the Owner shall have the right to withhold from any payments due or to become due to the Vendor an amount sufficient to protect the Owner from such claim, loss, cost expense, liability, damage or injury, including attorneys' fees and expenses reasonably necessary for the defense thereof.

The Vendor hereby certifies to the Owner that it complies with all employment related laws and regulations governing employment or collective bargaining agreements, if any. Nothing in this Agreement shall be construed as divesting any Vendor of its sole and exclusive right to control the means, manner or method of performance of the Work of any Vendor or their employees. Nothing in this Agreement shall be construed in a manner that would be in violation of the legal or contractual rights of any employee. The Vendor shall defend, hold harmless and indemnify the Owner against and from any and all claims, demands, suits, actions, costs and expenses including reasonable attorneys' fees, growing out of any claims by an employee or independent Vendor of any tier alleging the violation of any of the individuals' employment rights, whether legal, constitutional or contractual in nature. This provision shall be accorded the broadest meaning.

1.20 DELAYS AND EXTENSIONS OF TIME

No payment or compensation or claim for damages shall be made to the Vendor as compensation for

damages for any delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delays be avoidable or unavoidable. The Vendor's sole remedy for delays shall be an EXTENSION OF TIME ONLY, pursuant to and only in accord with this Paragraph, such extension to be a period equivalent to the time lost by reason of and all of the aforesaid causes, as determined by the Owner. In consideration for this grant of a time extension, the Owner shall not be held responsible for any loss or damage or increased costs sustained by the Vendor through any delays caused by the Owner or any other Vendor or on account of the aforesaid causes or any Other cause of delay. In the event the Vendor chooses to litigate this provision and fails to prevail in its entire litigation, the Vendor shall reimburse the Owner for any attorneys' fees, professional fees and all other costs and expenses incurred by the Owner associated with analyzing, defending, or otherwise opposing any such claim or litigation.

1.21 INSURANCE

- A. The Vendor shall not commence work until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Vendor hereunder.
- B. Compensation and Employer's Liability Insurance. The Vendor shall take out and maintain during the life of this Contract, the statutory Workman's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract. Employees Liability Insurance shall be for an amount of not less than \$100,000.
- C. Automobile Insurance. Each Vendor shall carry automobile insurance covering licensed vehicles, said insurance to have the following policy limits.

Combined single limit for bodily injury and property damage
\$500,000 per incident

Each Vendor shall carry comprehensive automobile insurance covering non-owned vehicles and hired cars, said insurance to have the same limits as immediately above.

- D. Comprehensive General Liability Insurance. Each Vendor shall maintain a policy of comprehensive general liability insurance including the following areas of coverage and policy limits:
 - 1. Area of coverage shall include:
 - Premises – Operations Liability
 - Owner's Protective Liability
 - Completion Operations and Products Liability
 - Contractual Liability
 - 2. Combined single limit for bodily injury and property damage
\$500,000 per incident
 - 3. Excess Blanket Liability - \$1,000,000.00 Single Limits Bodily Injury and

Property Damage Liability excess for primary insurances.

E. Certificates of Insurance

Certificates evidencing the foregoing insurance coverage shall be filed with the Owner and subject to approval for accuracies of protection. All policies shall be open to inspection by the Owner. If the Vendor fails to effect or maintain insurance as required, the Owner may insure its own interest and charge the cost thereof to the Vendor.

Said policies and certificates shall certify, among other things, that the insurance will not be canceled nor lapsed during the progress of the work covered by these specifications without first giving the Owner ten (10) days notice in writing.

It is expressly understood that the Vendors herein are independent Vendors, and that the employee of the Vendor shall in no way be construed to be employees of the Owner.

1.22 LIMITATION OF RESPONSIBILITY

In no event shall the Owner have control over, charge of, or any responsibility for construction or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. It is expressly understood and agreed that the presence on the jobsite of the Owner's visiting officers or employees, the Owner or supervisory personnel employed by Owner and the making by such personnel of any inspections of the Vendor's Work, materials, tools or equipment, or of the finished Work of the Vendor and their approval of same, or failure to take exception thereto, shall in no way relieve the Vendor from its absolute responsibility to perform its Work and furnish its materials in accord with the requirements of the Contract Documents. It is further understood that under no circumstances shall the Vendor urge, for any purpose whatsoever, that the presence of the Owner, any supervisory personnel, and visiting officers or employees of the Owner, and any failure by such personnel to take exception to any Work of the Vendor, constitute a ratification or approval of the Work or work methods employed by the Vendor if the same did not in fact comply with the requirements of the Contract Documents.

1.23 COMPETENT WORKMEN

No workmen shall be required as competent first class, within the meaning of this Act, except those who are duly skilled in their respective branches of labor, and who shall be paid not less than such rates of wages and for such hours work as shall be doing of similar work in the district where work is being done. According to Section 752 of the Public School Code of 1949, no person shall be employed to do work under such contract except competent and first class workmen and mechanics.

All workmen on this project must have Pennsylvania State Police Act 34 Clearance Affidavit. Attesting to that Clearance should be carried by each individual workman when on the premises or in the building. A copy of the Affidavit must be filed with the District Administration Office, prior to that workman performing work on the site. The cost of obtaining this "Clearance" and required badges shall be the responsibility of the Vendor.

Act 151-PA Child Abuse History Clearance: Successful bidder shall have a background check done on all employees who will be working in or around district buildings who will have “direct contract with students.” Background checks shall be in accord with Act 151 of 1994. The Vendor shall submit the original to the Owner prior to an employee beginning work. The cost of obtaining this “Clearance” and required badges shall be the responsibility of the Vendor.

1.24 PENNSYLVANIA PREVAILING WAGE RATES

If the total estimated project sum is greater than \$25,000.00, this regulation and the general Pennsylvania prevailing minimum wage rates, (Act 442 of 1961, P.L. 987, amended) as determined by the Secretary of Labor and Industry, which shall be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which public work is performed, are made part of this specification.

No workmen shall be employed on this work except in accord with the classifications set forth in the decision of the Secretary of Labor and Industry. If additional or different classifications are necessary, the procedure set forth in Section 7 of the Regulations for Pennsylvania Prevailing Wage Act shall be followed.

All workmen employed or working on this work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of any contractual relationship which may be alleged indirectly, except authorized deductions, the full amounts due at the time worked in the appropriate classification. This Contract does not prohibit payment of more than the general prevailing minimum wage rates as determined by the Secretary of Labor and Industry.

Each Vendor shall post for the entire period of construction the wage determination decisions of the Secretary of Labor and Industry, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates shall contain the following information:

- A. Name of Project.
- B. Name of Public Body for which it is being constructed.
- C. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
- D. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
- E. A statement advising workmen that if they have been paid less than the general prevailing minimum wage for their job classification, or if the Vendor is not complying with the Act or the Regulations in any manner whatsoever, they may file a protest, in writing, with the Secretary of Labor and Industry within three months of the date of the occurrence, objecting to the payment of any Vendor to the extent of the amount or amounts due or to become due to them as wages for work performed on the public work project. Any workmen paid less

than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the Contract, which right of action shall be exercised within six months from the occurrence of the event creating such right.

The Vendor shall keep accurate records showing the name, craft, classification, number of hours worked per day and actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with work. Such record shall include any deductions from each workman. The record shall be preserved for two years from the date of payment and shall be open at all reasonable hours to the inspection of the public body awarding the Contract and to the Secretary of Labor and Industry or his duly authorized representatives.

Apprentices shall be limited to such numbers as shall be in accord with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the Rules and Regulations issued pursuant thereto shall be employed on the public work project. Any workman using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft and classification as follows:

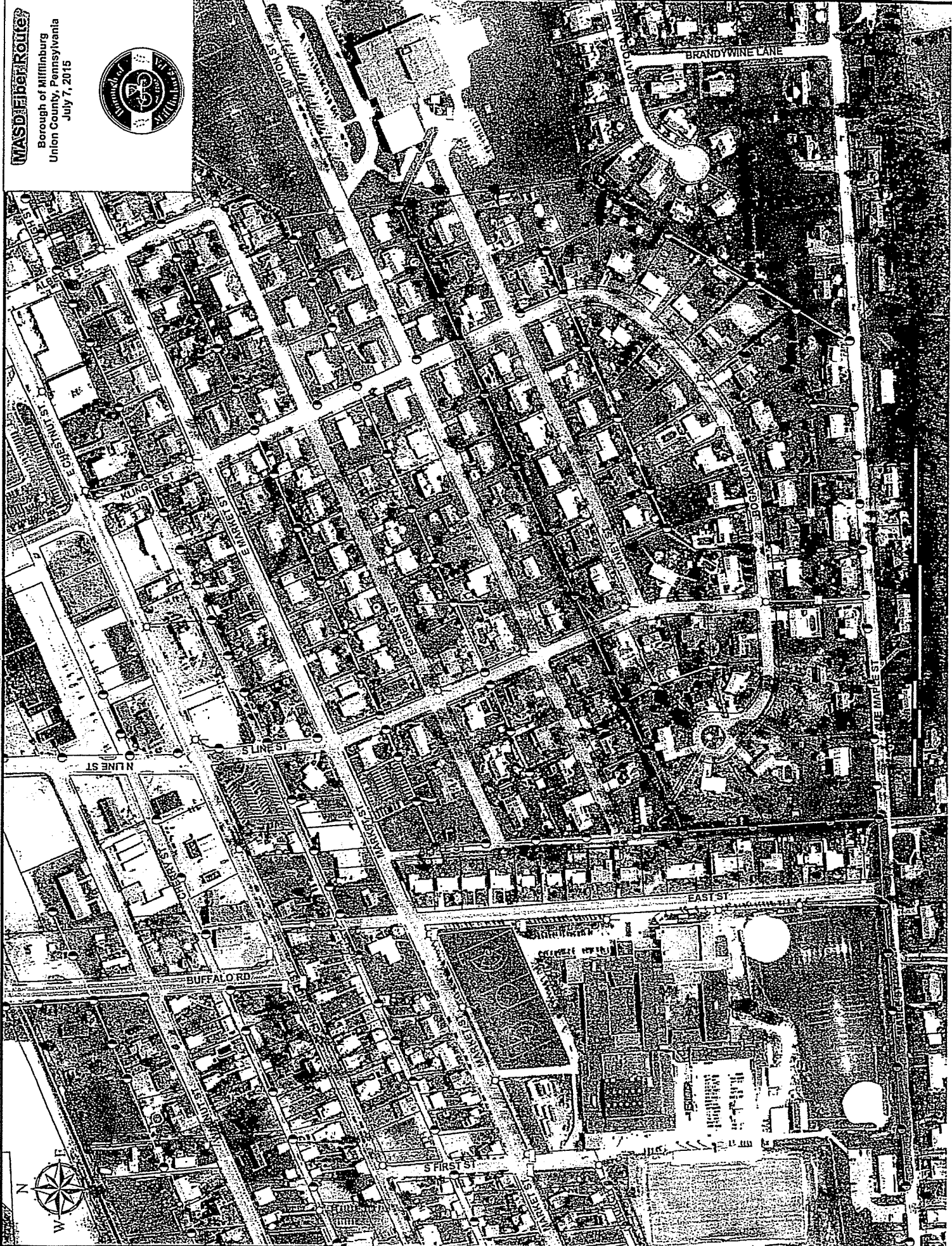
- A. Wages shall be paid without any deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.
- B. Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and these Regulations, regardless of the average hourly earnings resulting therefrom.

Each Vendor shall file a statement each week and a final statement at the conclusion of the Work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions of the contract as prescribed by this Section C of these Regulations, or of any wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.

END OF SPECIFICATION

APPENDIX A

MASDI Fiber Router
Borough of Mifflinburg
Union County, Pennsylvania
July 7, 2015



APPENDIX B

Pole Attachment Licensing Agreement

This Pole Attachment Licensing Agreement (“the Agreement”) dated DECEMBER 19, 2017 is made by and between the Borough of Mifflinburg, a municipality located in Union County, Pennsylvania (hereinafter called “the Borough”), and Mifflinburg Area School District, organized under the laws of the Commonwealth of Pennsylvania and authorized to operate a public school system in the Commonwealth of Pennsylvania (hereinafter called “Licensee”).

Recitals

- A. Licensee desires to install and maintain Communications Facilities and associated equipment as Licensee’s Attachments, on the Borough’s Poles to provide Communications Services; and
- B. The Borough is willing, to the extent it may lawfully and contractually do so, to issue one or more Permits authorizing the attachment of Licensee’s Communication Facilities to the Borough’s Poles subject to the terms and conditions of this Agreement, including specifically, and without limitation, the Borough’s right to refuse to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes or any other Applicable Standard; and
- C. The Poles owned by the Borough are public properties acquired and maintained by the Borough at significant expense to the taxpayers and the right to use the Poles owned by the Borough is a valuable property right; and
- D. The Borough desires to protect and manage the use of the Borough’s Poles, ensure public safety within public rights-of-way, and obtain financial compensation for Licensee’s use of the Borough’s Poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions contained in this Agreement the Borough and Licensee mutually covenant and agree as follows:

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric Borough Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the

regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the Borough or other federal, state, or local authority with jurisdiction over Borough Facilities.

- 1.3 **Attaching Entity:** means any public or private entity including Licensee that, pursuant to a license agreement with the Borough, places an Attachment on the Borough’s Pole or within the Borough’s Conduit System to provide Communications Service.
- 1.4 **Attachment(s):** means Licensee’s Communications Facilities that are placed directly on the Borough’s Poles, are Overlashed onto an existing Attachment, or are placed within the Borough’s Conduit System, but does not include either a Riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole.
- 1.5 **Capacity:** means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.6 **Climbing Space:** means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable Borough employees and contractors to safely climb, access, and work on Borough Facilities and equipment.
- 1.7 **Communications Facilities:** means wireline or wireless facilities, including but not limited to, fiber optic, copper, and/or coaxial cables, wireless antennas, receivers or transceivers, including any and all associated equipment, utilized to provide Communications Service.
- 1.8 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.
- 1.9 **Conduit System:** means the Borough’s conduits, Innerduct, manholes, handholes, vaults, pull-boxes, and trenches.
- 1.10 **Innerduct:** means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.
- 1.11 **Licensee:** means Mifflinburg Area School District, its authorized successors and assignees.
- 1.12 **Make-Ready Work:** means all work that the Borough reasonably determines to be required to accommodate Licensee’s Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of Borough Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Conduit System clearing, but does not include Licensee’s routine maintenance.
- 1.13 **Occupancy:** means the use or reservation of space for Attachments on a Borough Pole or portion of the Borough’s Conduit System.
- 1.14 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing attached Communications Facility.
- 1.15 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not

attached to Borough Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point (see Appendix D Specifications).

- 1.16 **Permit:** means written or electronic authorization (see Appendix C) by the Borough for Licensee to make or maintain Attachments to specific Borough Poles or spans of the Conduit System pursuant to the requirements of this Agreement. Licensee's attachments made prior to the Effective Date and authorized by the Borough (Existing Attachments) shall be deemed Permitted Attachments hereunder.
- 1.17 **Pole:** means a pole owned or controlled by the Borough that is used for the distribution of electricity and/ or Communications Service and is capable of supporting Attachments for Communications Facilities.
- 1.18 **Post-Construction Inspection:** means the inspection by the Borough or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.19 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or the Borough to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole or within a span of the Conduit System. Such work includes, but is not limited to, field inspection and administrative processing.
- 1.20 **Reserved Capacity:** means capacity or space on a Pole or within a portion of the Conduit System that the Borough has identified and reserved for its own future utility requirements at the time of the Permit grant, including the installation of communications circuits for operation of the Borough's electric system.
- 1.21 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.22 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by the Borough and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.23 **Borough Facilities:** means all personal property and real property owned or controlled by the Borough, including Poles, Conduit System, and related facilities.

Article 2—Scope of Agreement

- 2.0 **Grant of License.** Subject to the provisions of this Agreement, the Borough grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to the Borough's Poles and to install its Communications Facilities within the Borough's Conduit System.
- 2.2 **Parties Bound by Agreement.** Licensee and the Borough agree to be bound by all provisions of this Agreement.
- 2.3 **Permit Issuance Conditions.** The Borough will issue one or more Permit(s) to Licensee only when the Borough determines, in its sole judgment, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set

forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.

- 2.4 Reserved Capacity.** Access to space on Borough Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future electric service use. At the time of Permit issuance, the Borough shall notify Licensee if capacity on particular poles is being reserved for reasonably foreseeable future electric use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, the Borough may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for the Borough's future utility service. If reclaimed for the Borough's use, the Borough may at such time also install associated facilities, including the attachment of communications lines for internal Borough operational or governmental communications requirements. The Borough shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity for core utility service requirements, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third party Attachments) shall be determined in accordance with Article 9. Licensee shall not be required to bear any of the costs or rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any entity other than the Borough.
- 2.5 No Interest in Property.** No use, however lengthy, of any Borough Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the Borough's rights to Borough Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.
- 2.6 Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole or within any specific portion of the Conduit System.
- 2.7 Borough's Rights over Poles.** The parties agree that this Agreement does not in any way limit the Borough's right to locate, operate, maintain, or remove its Poles or Conduit System in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.
- 2.8 Expansion of Capacity.** The Borough will take reasonable steps to expand Pole/Conduit System Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the Borough to install, retain, extend, or maintain any Pole or portion of the Conduit System for use when such Pole/Conduit System is not needed for the Borough's own service requirements.
- 2.9 Other Agreements.** Except as expressly provided in this Agreement, nothing in this

Agreement shall limit, restrict, or prohibit the Borough from fulfilling any agreement or arrangement regarding its Poles or Conduit System into which the Borough has previously entered, or may enter in the future, with others not party to this Agreement.

2.10 Permitted Uses. This Agreement is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without the Borough's express written consent to such use. Nothing in this Agreement shall be construed to require the Borough to allow Licensee to use the Borough's Poles or Conduit System after the termination of this Agreement.

2.11 Overlashing. The following provisions apply to Overlashing:

2.11.1 Licensee shall obtain a Permit for each Overlashing, in accordance with the requirements of Article 6. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to removal or, at the Borough's discretion, imposition of an Unauthorized Attachment fee, as specified in Appendix A, Item 3.

2.11.2 Authorized Overlashing to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee or Licensee's Affiliate shall, however, be responsible for all Make-Ready Work and other charges associated with the Overlashing. Licensee shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.

2.11.3 At Licensee's request, the Borough may allow Overlashing to accommodate facilities of a third party, not affiliated with Licensee. In such circumstances, the third party must enter into a License Agreement with the Borough, obtain Permit(s), and pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. The Borough shall not grant Permit(s) to third parties allowing Overlashing of Licensee's Communications Facilities without Licensee's consent. Authorized Overlashing shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee, however, Licensee shall remain solely responsible for all costs, expenses and fees owed to the Borough under this Agreement.

2.11.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.12 Enclosures. Licensee shall not place Pedestals, Vaults, and/or other Enclosures on or within four(4) feet of any Pole or other Borough Facilities without the Borough's prior written permission. If permission is granted, all such installations shall be made according to the Specifications and Drawings in Appendix D of this Agreement and charges as provided in Appendix A. Such permission shall not be unreasonably withheld. Further, Licensee agrees to move any such aboveground enclosures in order to provide sufficient space for the Borough to set a replacement Pole.

Article 3—Fees and Charges

- 3.1 Payment of Fees and Charges.** Licensee shall pay to the Borough the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.
- 3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay all invoices from the Borough pursuant to this Agreement within thirty (30) calendar days after the Borough issues the invoice.
- 3.3 Billing of Attachment Fee.** The Borough shall invoice Licensee for the per-pole Attachment Fee annually. The Borough will submit to Licensee an invoice for the annual rental period not later than January 1st of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on December 31st of the next year, and each subsequent annual rental period shall commence on the following January 1st and conclude on December 31st of the subsequent year. The invoice shall set forth the total number of the Borough's Poles or portion of Conduit System on/in which Licensee was issued and/or holds Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.
- 3.4 Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole or portion of Conduit System is not used or abandoned by the Borough.
- 3.5 Late Charge.** If the Borough does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to the Borough at the rate of one percent (1%) per month, or the maximum interest allowed by law, whichever is greater, on the amount due.
- 3.6 Payment for Work.** Licensee will be responsible for payment to the Borough for all work that the Borough or the Borough's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities.
- 3.7 Advance Payment.** At its sole discretion, the Borough may require that Licensee pay in advance all reasonable costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8 True-Up.** Whenever the Borough, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee shall pay the Borough for the difference in cost. To the extent that the Borough's actual cost of the activity is less than the estimated cost, the Borough shall refund to Licensee the difference in cost.
- 3.9 Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the Borough, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. The Borough shall bill its services based upon actual costs, and such costs will be determined in accordance with the Borough's cost accounting systems used for recording capital and

expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be the greater of the fully loaded costs of municipal labor or the current "union scale" for comparable work in the region. If Licensee was required to perform work and fails to perform such work, necessitating completion of the work by the Borough, the Borough may either charge an additional ten percent (10%) of its costs or assess the penalty specified in Appendix A.

- 3.10 Work Performed by the Borough.** Wherever this Agreement requires the Borough to perform any work, the Borough, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond sixty (60) days shall constitute a material default of this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.
- 4.2 Tagging.** Licensee shall Tag all of its Communications Facilities as specified in Appendix D and/or applicable federal, state, and local regulations upon installation of such Facilities. Within one year of the execution of this Agreement, Licensee shall also tag any untagged Communications Facilities that were on Borough Poles or in the Borough's Conduit System on the effective date of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.
- 4.3 Interference.** Licensee shall not allow its Communications Facilities to impair the ability of the Borough or any third party to use the Borough's Poles or Conduit System, nor shall Licensee allow its Communications Facilities to interfere with the operation of any Borough Facilities or third-party facilities.
- 4.4 Protective Equipment.** Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by the Borough's facilities in the event of a contact with such facilities. Except as provided in Paragraph 16.1, the Borough shall not be liable for any actual or consequential damages to Licensee's Communications Facilities, Licensee's customers' facilities, or to any of Licensee's employees, contractors, customers, or other persons.
- 4.5 Violation of Specifications.** If Licensee's Communications Facilities, or any part of them, are installed, used, or maintained in violation of this Agreement, and Licensee has not

corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from the Borough, the Borough, at its option, may correct such conditions. The Borough will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the Borough believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the Borough's service obligations, or present an immediate threat to the physical integrity of Borough Facilities, the Borough may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, the Borough will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the Borough in taking action pursuant to this Paragraph, and Licensee shall indemnify the Borough against any liability, costs, and expenses, including reasonable attorney's and expert fees, arising out of or relating to any such work.

- 4.6 Restoration of Borough Service.** The Borough's service restoration requirements shall take precedence over any and all work operations of Licensee on the Borough's Poles or within the Borough's Conduit System.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension to such Permit(s), the Borough may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, the Borough shall endeavor to make other space available to Licensee, upon written application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If the Borough uses the space for its own needs or makes them available to other parties, then from the date that the Borough or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.
- 4.8 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that become nonfunctional and no longer fit for service (Nonfunctional Attachment) as provided in this Paragraph 4.8. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from the Borough that removal is requested by the Borough or is necessary to accommodate another Attaching Entity's use of the affected Pole(s) or portion of the Conduit System, in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until the Borough notifies Licensee that removal is necessary to accommodate the Borough's or another Attaching Entity's use of the affected Pole(s). Licensee shall give the Borough notice of any Nonfunctional Attachments as provided in Article 15.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Before Licensee occupies any of the Borough's Poles or any portion of the Borough's Conduit System, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Communications Facilities on public or private property. The Borough retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Communications Facilities. Licensee shall defend, indemnify, and reimburse the Borough for all losses, costs, and expenses, including reasonable attorney's fees, that the Borough may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on the Borough's Poles or within the Borough's Conduit System or to provide particular services.
- 5.2 Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of the Borough's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of the Borough's Poles or to any portion of the Borough's Conduit System, to the extent that Licensee's Attachment would result in a forfeiture of the Borough's rights. Any Permit that would result in forfeiture of the Borough's rights shall be deemed invalid as of the date that the Borough granted it. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from the Borough. If Licensee does not remove its Communications Facilities in question within thirty (30) days of receiving written notice from the Borough, the Borough may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify the Borough for liability, costs, and expenses, including reasonable attorney's fees, that may accrue during Licensee's challenge.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by the Borough to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Attachment.

Article 6—Permit Application Procedures

- 6.1 Permit Required.** Licensee shall not make any Attachments to any of the Borough's Poles or within any portion of the Borough's Conduit System without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless updates or upgrades are required by Applicable Standards, or unless the Borough notifies Licensee

to the contrary, Licensee shall not be required to obtain Permits for Attachment(s) existing as of the effective date of this Agreement. Such existing Attachments shall, however, be subject to the Attachment Fees specified in Appendix A. Licensee shall provide the Borough a list of all such existing Attachments within six (6) months of the effective date of this Agreement.

- 6.2 Permits for Overlashing.** As set out in Paragraph 2.11, Permits are required for any Overlashing allowed under this Agreement and Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.
- 6.3 Professional Certification.** Unless otherwise waived in writing by the Borough, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the Borough, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Communications Facilities can be and were installed on the identified Poles or within specified portions of the Conduit System in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The Borough may require the Licensee's professional engineer to conduct a post-construction inspection that the Borough will verify by means that it deems to be reasonable. The Borough, at its discretion, may waive the requirements of this Paragraph 6.3, with respect to service drops.
- 6.4 Borough Review of Permit Application.** Upon receipt of a properly executed Application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, and detailed plans for the proposed Attachments in the form specified in Appendix D, the Borough will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. The Borough's acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, the Permit application process shall be consistent with the following timeline:
- 6.4.1 Review Period.** The Borough shall review and respond to properly executed and complete Permit Applications for routine installations as promptly as is reasonable with a goal of providing a response during normal circumstances within forty-five (45) days of receipt. For Permit Applications seeking Attachments to 50 or more Poles, the Borough may require additional time to review. The Borough's response will either provide a written explanation as to why the Application is being denied, in whole or in part, or provide an estimate of the costs of all necessary Make-Ready Work.
- 6.4.2** Upon receipt of the Borough's Make-Ready estimate, Licensee shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.
- 6.4.3** After receipt of Licensee's approval of the estimate and the required payment, the Borough shall proceed with the Make-Ready Work as a part of its normal

work schedule. The Borough will make reasonable efforts to complete Make-Ready Work within ninety (90) days after payment for such work is received. The Borough may consider a request by Licensee for an expedited construction schedule. Licensee will be responsible for additional costs incurred by the Borough if the work is expedited.

6.4.4 Make-Ready Work for attachments of wireless Communications Facilities located above the electric space, if authorized under this Agreement, and for attachments within Conduits shall be provided on a reasonable, timely basis but are not subject to a specific time.

6.4.5 The Borough may toll the time for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters, or other emergency situations.

6.5 **Permit as Authorization to Attach.** Upon completion of any necessary Make-Ready Work and receipt of payment for such work, the Borough will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

Article 7—Make-Ready Work/Installation

7.1 **Estimate for Make-Ready Work.** If the Borough determines that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment, it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

7.2 **Payment of Make-Ready Work.** Licensee shall pay in full the estimated cost of the Make-Ready Work prior to the Borough beginning the Make-Ready Work. Upon completion, the actual costs of Make-Ready Work shall be itemized in accordance with Paragraph 3.9 and trued up in accordance with Paragraph 3.8.

7.3 **Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by the Borough and/or a contractor authorized by the Borough to perform such work. If the Borough cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within ninety (90) calendar days of Licensee's agreement to the Make-Ready Work estimate and the Borough's receipt of Licensee's payment of the estimate, Licensee may request the ability to use a qualified contractor to perform such work and shall specify when such work would be performed. In all instances, qualified contractors, if allowed, must be pre-approved by the Borough for such work on an annual basis.

7.4 **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, the Borough will endeavor to include such work in its normal work schedule. If Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the Borough's normal work hours, Licensee will pay any resulting increased costs. Nothing in this Agreement shall be construed to require the Borough to perform Licensee's work before other scheduled work or Borough service restoration.

7.5 **Notification of Make-Ready Work.** Before starting Make-Ready Work, the Borough shall

notify all Attaching Entities of the date and location of the scheduled work and shall afford all such entities an opportunity to make any modifications to their existing Attachments in connection with the Make-Ready Work.

7.6 Written Approval of Installation Plans Required. Before making any Attachments to the Borough's Poles or Conduit System, including Overlapping of existing Attachments, Licensee must obtain the Borough's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.

7.7 Licensee's Installation/Removal/ Maintenance Work.

7.7.1 All of Licensee's installation, removal, and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of the Borough's Poles, Conduit System, or other Facilities or other Attaching Entity's facilities or equipment. All such work is subject to the insurance requirements of Article 18.

7.7.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Paragraph

4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Minimum Design Specifications contained in Appendix D.

Article 8—Transfers

8.1 Required Transfers of Licensee's Communications Facilities. If the Borough reasonably determines that a transfer of Licensee's Communications Facilities is necessary, the Borough will require Licensee to perform such transfer at its own expense as soon as reasonably possible and in any case within sixty (60) calendar days after receiving notice from the Borough. If Licensee fails to transfer its Facilities within sixty (60) calendar days after receiving such notice from the Borough, the Borough shall have the right to transfer Licensee's Facilities using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. The Borough shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply in emergency situations. In emergency situations, the Borough shall provide such advance notice as is practical, given the urgency of the particular situation. The Borough shall then provide written notice of any such actions taken within ten (10) days following the occurrence. Irrespective of who owns Facilities that are overlashed on to Licensee's Attachments, Licensee is responsible for the transfer of such Facilities and the costs of doing so.

Article 9—Modifications and/or Replacements

9.1 Licensee's Action Requiring Modification/Replacement. If any Pole or Conduit to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, the Borough will notify

Licensee of the necessary Make-Ready Work, and associated costs, to provide adequate Pole or Conduit space, including, but not limited to, replacement of the Pole and/or rearrangement or transfer of Borough Facilities, as well as the facilities of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the Borough the actual cost of the Make-Ready Work, performed by the Borough, in accordance with Paragraph 3.9. The Borough, in its discretion, may require advance payment. Licensee shall also be responsible for obtaining, and furnishing to the Borough before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities (including Overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.

9.2 Treatment of Multiple Requests for Same Pole or Conduit. If the Borough receives Permit Applications for the same Pole or Conduit from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification of the Pole or Conduit or replacement of the Pole, the Borough will allocate among such licensees the applicable costs associated with such modification or replacement.

9.3 Guying. The use of guying to accommodate Licensee's Attachments shall be provided by, and at the expense of, Licensee and to the satisfaction of the Borough, as specified in Appendix D. Licensee shall not attach its guy wires to the Borough's anchors without prior written permission of the Borough. If permission is granted, charges may apply.

9.4 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of the Borough's cables or wires) shall be allocated to the Borough and/or Licensee and/or other Attaching Entity on the following basis:

9.4.1 If the Borough intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee shall not be responsible for costs associated with the rearrangement or transfer of Licensee's Communications Facilities, unless and to the extent the rearrangement or transfer is necessary in connection with the Borough's reacquisition of Reserved Capacity from Licensee. Prior to making any such modification or replacement, the Borough shall provide Licensee written notification of its intent in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment. Should Licensee decide to do so, it must seek the Borough's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Communications Facilities, Licensee shall pay its fair share of the costs incurred by the Borough in making the space on the Poles accessible to Licensee.

9.4.2 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for all costs caused by the modification or replacement of the Pole as well as the costs associated with the transfer or

rearrangement of any other Attaching Entity's Communications Facilities. At the time Licensee submits a Permit Application to the Borough, Licensee shall submit evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by the transfer or rearrangement of their Facilities. The Borough shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph 9.4.2.

9.4.3 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the Borough or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.

9.4.4 If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), the Borough shall pay the costs of such modification or replacement and Licensee shall pay the costs of rearranging or transferring its Communications Facilities.

9.5 Borough Not Required to Relocate. Nothing in this Agreement shall be construed to require the Borough to relocate its Attachments or to modify or replace its Poles for the benefit of Licensee.

Article 10—Abandonment or Removal of Borough Facilities

10.1 Notice of Abandonment or Removal of Borough Facilities. If the Borough desires at any time to abandon, remove, or underground any Borough Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such Borough Facilities. Notice may be limited to thirty (30) calendar days if the Borough is required to remove or abandon its Borough Facilities as the result of the action of a third party and the lengthier notice period is not practical. Such notice shall indicate whether the Borough is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notification period, Licensee has not yet removed and/or transferred all of its Communications Facilities and has not entered into an agreement to purchase the Borough's Facilities pursuant to Paragraph 10.2, the Borough shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee's expense. The Borough shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

10.2 Option to Purchase Abandoned Poles. Should the Borough desire to abandon any Pole, the Borough may, in its sole discretion, grant Licensee the option of purchasing such Pole at a price to be negotiated with the Borough. Licensee must notify the Borough in writing within fifteen (15) calendar days of the date of the Borough's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing

Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the Borough and Licensee fail to enter into an agreement for Licensee to purchase the Pole within forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. Nothing in this Agreement shall be construed as requiring the Borough to sell Licensee Poles that the Borough intends to remove or abandon.

- 10.3 Underground Relocation.** If the Borough moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from the Borough and must either relocate its affected Facilities underground with the Borough or find other means to accommodate its Facilities. If Licensee does not remove its Attachments within sixty (60) days, the Borough shall have the right to remove or transfer Licensee's Communications Facilities at Licensee's expense. Licensee's failure to remove its Facilities as required under this Paragraph 10.3 shall subject Licensee to the penalty provisions of Appendix A.

Article 11—Removal of Licensee's Facilities

- 11.1 Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Borough Poles or portions of Conduit System at its own expense. If Licensee fails to remove such Facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by the Borough, the Borough shall have the right, but not the obligation, to remove or transfer such Facilities at Licensee's expense.

Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s) or portion of the Conduit System covered by the Permit.
- 12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment(s) and remove its Communications Facilities from the affected Pole(s) or segment of the Conduit System, provided, however, that before commencing any such removal, Licensee must obtain the Borough's written approval of Licensee's plans for removal, including the name of the person or entity performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from Borough Facilities within thirty (30) calendar days, the Borough shall have the right, but not the obligation, to remove or transfer Licensee's Attachments at Licensee's expense.

Article 13—Inspection of Licensee's Facilities

- 13.1 Inspections.** The Borough may conduct an inventory and inspection of Attachments at any time. Within thirty (30) calendar days of receiving written notice from the Borough, Licensee shall correct all Attachments that the Borough identifies as being out of

compliance with Applicable Standards. If the Borough finds that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its pro-rata share of the costs of the inspection.

- 13.2 Notice.** The Borough will give Licensee reasonable advance written notice of such inspections, except in those instances in which safety considerations justify the need for such inspection without delay.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the Borough any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability, whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee shall furnish to the Borough annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by the Borough.

Article 14—Unauthorized Occupancy or Access

- 14.1 Penalty Fee.** If any of Licensee's Attachments are found occupying any Pole or segment of the Conduit System for which no Permit has been issued, the Borough, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee, as specified in Appendix A, Item 3. If Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification of it, the Borough shall have the right, but not the obligation, to remove such Communications Facilities at Licensee's expense.
- 14.2 No Ratification of Unauthorized Use.** No act or failure to act by the Borough with regard to any unauthorized use shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a Permit for a previously unauthorized Attachment shall not operate retroactively or constitute a waiver by the Borough of any of its rights or privileges under this Agreement or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 15—Reporting Requirements

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the following information to the Borough, using the reporting form contained in Appendix E:

- 15.1** The Poles on which Licensee has installed, during the relevant reporting period, Risers, for which no Permit was required.
- 15.2** All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.
- 15.3** Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

Article 16—Liability and Indemnification

- 16.1 Liability.** The Borough reserves to itself the right to maintain and operate its Poles and Conduit System in the manner that will best enable it to fulfill its service requirements. Licensee agrees to use the Borough's Poles and Conduit System at Licensee's sole risk. Notwithstanding the foregoing, the Borough shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, the Borough agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of facilities damaged by the negligence or willful misconduct of the Borough; provided, however, that the aggregate liability of the Borough to Licensee, in any fiscal year, for any fines, penalties, claims, damages, or costs, arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Communications Facilities (including special, indirect, punitive, or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to the Borough for that year, as calculated based on the number of Attachments under Permit at the time of the occurrence, as set forth in Appendix A, Item 1.
- 16.2 Indemnification.** Licensee, and any agent, contractor, or subcontractor of Licensee, shall defend, indemnify, and hold harmless the Borough and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the Borough under any Workers Compensation Laws or under any plan for employees disability and death benefits), and expenses (including reasonable attorney's fees of the Borough and all other costs and expenses of litigation) (Covered Claims) arising in any way, including any act, omission, failure, negligence, or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents, or contractors, of Licensee's Communications Facilities, except to the extent of the Borough's gross negligence or willful misconduct solely giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:
- 16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
 - 16.2.2** Cost of work performed by the Borough that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer, or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the Borough to perform on Licensee's behalf;
 - 16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, or contractors, pursuant to this Agreement;

- 16.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or contractors, of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

16.3 Procedure for Indemnification.

- 16.3.1 The Borough shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against the Borough, the Borough shall give the notice to Licensee no later than fifteen (15) calendar days after the Borough receives written notice of the action, suit, or proceeding.

- 16.3.2 The Borough's failure to give the required notice will not relieve Licensee from its obligation to indemnify the Borough unless, and only to the extent that, Licensee is materially prejudiced by such failure.

- 16.3.3 Licensee will have the right at any time, by notice to the Borough, to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the Borough. The Borough agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, the Borough shall have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by the Borough with respect to the claim.

- 16.3.4 If Licensee assumes the defense of a third-party claim as described above, then in no event will the Borough admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent.

- 16.4 **Environmental Hazards.** Licensee represents and warrants that its use of the Borough's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about the Borough's Poles/ Conduit System or transport to the Borough's Poles/Conduit System any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless the Borough and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened

release, storage, or discovery of any Hazardous Substances on, under, or adjacent to the Borough's Poles/Conduit System attributable to Licensee's use of the Borough's Poles or Conduit System.

Should the Borough's Poles be declared to contain Hazardous Substances, the Borough, Licensee, and all Attaching Entities shall share proportionately in the cost of disposal of the affected Poles based on each entity's individual percentage use of same. For Attaching Entities, such percentage shall be derived from the sum of space occupied by each Attaching Entity plus its share of the common space, including the NESC safety space. For the Borough, such percentage shall be equal to the space above the NESC safety space plus its share of the common Space. If the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

- 16.5 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the Borough of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies the Borough shall be construed in any way to limit any other indemnification provision contained in this Agreement.
- 16.6** If the Borough brings a successful action in a court of competent jurisdiction to enforce this Agreement, Licensee shall pay the Borough's reasonable attorney's fees.

Article 17—Duties, Responsibilities, and Exculpation

- 17.1 Duty to Inspect.** Licensee acknowledges and agrees that the Borough does not warrant the condition or safety of the Borough's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect the Borough's Poles or Conduit System and/ or premises surrounding the Poles or Conduit System, prior to commencing any work on the Borough's Poles or within the Borough's Conduit System or entering the premises surrounding such Poles or Conduit System.
- 17.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 17.3 DISCLAIMER. THE BOROUGH MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE BOROUGH'S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE BOROUGH MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE BOROUGH EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 17.4 Duty of Competent Supervision and Performance.** The parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other Borough Facilities. The parties understand and intend that energy

generated, stored, or transported by Borough Facilities will not be interrupted during the continuance of this Agreement, except in emergencies endangering life or threatening grave personal injury or property. Licensee shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of the Borough; and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors, and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of the Borough's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- 17.5 Requests to De-energize.** If the Borough de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse the Borough in accordance with Paragraph 3.9, for all costs and expenses that the Borough incurs in complying with Licensee's request. Before the Borough de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.
- 17.6 Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of the Borough, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify the Borough immediately.
- 17.7 Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on the Borough's Poles or within the Borough's Conduit System by Licensee's employees, agents, contractors, or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

- 18.1 Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:
- 18.1.1 Workers Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Pennsylvania law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of the Borough. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form

property damage, independent contractor's coverage with limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

18.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

18.1.4 Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.

18.1.5 Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings, and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Borough Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as extended coverage insurance or self-insure such exposures.

18.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the state of Pennsylvania and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

18.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the Borough with a certificate of insurance (Certificate) and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. The Borough shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The Borough, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the Borough. Licensee shall defend, indemnify and hold harmless the Borough and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to the Borough upon request.

- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease Licensee's exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with the Borough except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to the Borough's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

The Borough shall have the right to grant, renew, and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use Borough Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the Borough, which consent shall not be unreasonably withheld.
- 20.2 Obligations of Assignee/Transferee and Licensee.** Licensee may assign or transfer this Agreement and the rights and obligations hereunder to any entity controlling, controlled by or under common control with Licensee without consent of the Borough, but upon thirty (30) days prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee, the permitted assignee, and any other party liable to the Borough shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by the Borough.
- 20.3 Sub-licensing.** Without the Borough's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on the Borough's Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on the Borough's Poles or within the Borough's Conduit System. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject

to this Paragraph 20.3.

Article 21—Failure to Enforce

Failure of the Borough or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 22—Issue Resolution Process

- 22.1 Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.
- 22.2 Initial Meeting.** At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 22.3 Executive Meeting.** If ninety (90) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation or another alternative dispute resolution procedure.
- 22.4 Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction; either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 24.
- 22.5 Confidential Settlement.** Unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 22.6 Business as Usual.** During any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

Article 23—Termination of Agreement

The Borough shall have the right, pursuant to the procedures set out in this Article 23, to terminate this entire Agreement, or any Permit issued under it, whenever Licensee is in default of any material term or condition of this Agreement, including, but not limited to, the following circumstances:

- 23.1.1 Construction, operation, or maintenance of Licensee's Communications Facilities in violation of law, or in aid of any unlawful act or undertaking; or
 - 23.1.2 Construction, operation, or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental authority or any private holder of easements or other rights, or violation of any other agreement with the Borough; or
 - 23.1.3 Construction, operation, or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18.
- 23.3 The Borough will notify Licensee in writing of any defaults by Licensee under this Agreement. Licensee shall take immediate corrective action to eliminate any such defaults within thirty (30) calendar days, or such longer period as the parties may agree, and shall confirm in writing to the Borough that the cited condition or conditions have ceased or been corrected, or are in the process of being corrected.
- 23.4 If Licensee contests the existence of the default, it may invoke the dispute resolution procedures of Article 22.
- 23.5 If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct a default in a timely manner or fails to give the required confirmation, the Borough may immediately terminate this Agreement or any Permit(s) granted under it. In the event of termination of this Agreement or any of Licensee's rights, privileges, or authorizations, the Borough may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, from any or all of the Borough's Poles or portions of the Borough's Conduit System. In such instance, Licensee shall remain liable to the Borough for all fees and charges accrued pursuant to the terms of this Agreement.

Article 24—Term of Agreement

- 24.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of three (3) years and shall automatically be renewed for additional three (3) year terms unless either party provides written notice of intention to terminate to the other party ninety (90) days prior to the end of the then current term.
- 24.2 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities, as provided for in Article 16.

Article 25—Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both parties.

Article 26—Notices

- 26.1** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to the Borough: Mifflinburg Borough
 120 N. 3rd St.
 Mifflinburg, PA 17844
 Attn.: Borough Manager

If to Licensee: Mifflinburg Area School District
 178 Maple Street
 Mifflinburg, PA 17844

or to such other address as either party, from time to time, may give the other party in writing.

- 26.2** The above notwithstanding the parties may agree to utilize electronic communications such as email for notifications related to the Permits application and approval process and necessary transfer or pole modifications.
- 26.3** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the Borough can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the Borough's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate the Borough's liability to Licensee for any actions that the Borough deems reasonably necessary given the specific circumstances.

Article 27—Entire Agreement

This Agreement and its appendices constitute the entire agreement between the parties concerning attachments of Licensee's Communications Facilities on the Borough's Poles or within the Borough's Conduit System within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between the Borough and Licensee are superseded and of no further effect.

Article 28—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

Article 29—Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice

of law) of the state of Pennsylvania.

Article 30—Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 31—Financial Security

The Borough may require Licensee to provide financial security to secure the performance of Licensee's obligations hereunder. If the Borough elects to do so, written notice will be provided to Licensee at least thirty (30) days in advance and then Licensee shall provide financial security to the Borough in the form of a performance bond or letter of credit in an amount determined as follows:

Number of Poles	Amount of Financial Security
1 – 349	\$10,000
350 – 699	\$50,000
700+	\$100,000

The financial security shall be with an entity and in a form acceptable to the Borough. The purpose of the financial security is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, and fees due to the Borough that arise by reason of the construction, operation, maintenance, or removal of Licensee's Communications Facilities on or about the Borough's Poles or within its Conduit System. The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

Article 32—Force Majeure

- 32.1** If either the Borough or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slow-downs, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.
- 32.2** The Borough shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 32.1, provided that Licensee presents the Borough with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due the Borough under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

BOROUGH OF MIFFLINBURG

BY: Margaret A. Mean

Title: Borough Manager

ENTER LICENSEE NAME

BY: Mifflinburg Area School District 

Title: Business Administrator

Appendix A—Fees and Charges

Pole Attachment Fees and Charges

Effective Date _____

1. Annual Pole Attachment Fee:

Because Licensee is a public school district and has historically had attachments on the Borough's poles for which the Borough has not imposed a fee, the Borough has decided not to charge this fee at this time.

2. Non-Recurring Fees:

One-time License Agreement Fee Same as # 1 above.

Permit Application Fee Same as # 1 above.

Make Ready Work Charges See Article 3 of Agreement

Miscellaneous Charges See Article 3 of Agreement

Inspection Fees See Article 3 of Agreement

3. Unauthorized Attachment Penalty Fee:

\$50 per occurrence.

4. Failure To Timely Transfer, Abandon, or Remove Facilities Penalty:

\$3 per day, per pole, first 30 days; after the initial 30 days the penalty shall be \$15 per day, per pole.

Conduit Fees and Charges

1. Annual Conduit Rental Fee:

Because Licensee is a public school district and has historically had attachments on the Borough's poles for which the Borough has not imposed a fee, the Borough has decided not to charge this fee at this time.

2. Non-Recurring Fees:

One-time License Agreement Fee Same as # 1 above.

Permit Application Fee Same as # 1 above.
(1–100 feet of conduit)

Permit Application Fee Same as # 1 above.
(101 or more feet of conduit)

Make Ready Work Charges See Article 3 of Agreement

Miscellaneous Charges See Article 3 of Agreement

Inspection Fees

See Article 3 of Agreement

3. **Unauthorized Conduit Usage Penalty Fee:**
\$30 per linear foot, per occurrence.
4. **Failure to Timely Transfer, Abandon or Remove Facilities Penalty:**
\$2 per linear foot, first 30 days; after the initial 30 days the penalty shall be \$10 per linear foot.

Appendix B—Pole Attachment Permit Application Process

The following procedure is to be followed by each Licensee seeking to make new Attachments on the Borough's Poles, or overlash to existing pole tenant facilities on the Borough's Poles. Note that no entity may make any Attachments to the Borough's Poles or overlash to existing pole tenant facilities on the Borough's Poles without having first entered into a binding Pole Attachment Licensing Agreement with the Borough. Third parties seeking to overlash to an existing pole tenant facility must also have a written overlash agreement with the pole tenant to be overlash. The overlash agreement must be provided to the the Borough at the time of application.

1. Licensee shall submit a written request to perform a Pre-Construction Inspection. The request must include a preliminary route description. Licensee shall have a professional engineer or Borough-approved employee or contractor, participate in a Pre-Construction Inspection, which will include a review of the proposed Attachment(s) to determine the feasibility of the request and identify any potential Make-Ready Work. Appendix F to this Agreement contains the minimum design review information that an applicant must provide and a worksheet for determining the minimum specifications that the proposed Attachment must meet.
2. Following the Pre-Construction Inspection, Licensee shall submit a completed Permit Application (Appendix C) that includes: route map, information required in Appendix F, installation plans, recommendations on Make-Ready Work, and a pole-loading analysis stamped by a professional engineer. Licensee shall prepare the Permit Application in adherence with the Applicable Standards (Section 1.2 of Agreement) and specifications (Appendix D).
3. At the attacher's expense, the Borough will review the recommendations from the inspection and the pole-loading analysis, and discuss any issues with the Licensee.
4. Upon receipt of written authorization, the Borough will proceed with Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the Make-Ready Work charges as set out by the Borough and agreed to by the Licensee.
5. Upon completion of the Make-Ready Work, the Borough will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.
6. Unless waived in writing by the Borough, the Licensee's professional engineer, Borough-approved employee, or contractor shall submit written certification that he/she has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within ninety (90) calendar days after installation is complete. The Borough will verify the inspection by means that it deems to be reasonable.

**Appendix C— Application
for Permit**

Application for Permit

Application Date: ____/____/____

To: Mifflinburg Borough, 120 N. 3rd St., Mifflinburg, PA 17844

Desire to: ☐ Attach to Borough Pole(s) ☐ Remove Attachment from Borough Pole(s)

☐ Overlash to existing facility attached to Borough Pole(s)

Permit No. _____ Superseded Permit No. _____

Number of Poles this permit _____ Sheet 1 of _____

Licensee Name _____

Address _____

Contact Person: Phone _____ Title _____

Borough

Contact Person: Phone _____ Title _____

Narrative Description of proposed activity:

Application for Permit

In accordance with the terms and conditions of the Pole Attachment Licensing Agreement dated_____, application is hereby made for a Permit to attach to and/or vacate Pole(s) in the locations detailed on the attached Route Map(s). Also, attached is documentation as required by Appendix F of the Agreement. If applicable, the engineer's name, state registration number, and phone number are:

Name _____ Phone _____

Registration # _____

Permission is hereby granted to Licensee to attach and/or vacate poles listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by the Borough and agreed to by the Licensee.

SUBMITTED:

APPROVED:

Licensee _____

Borough _____

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Appendix D— Specifications for Licensee's Attachments to Borough Poles

Licensee, when making Attachments to Borough Poles, will adhere to the following engineering and construction practices.

A. All Attachments shall be made in accordance with the Applicable Standards, as defined in Paragraph 1.2 of this Agreement.

B. Clearances

1. **Attachment and Cable Clearances:** Licensee's Attachments on Borough Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code ("NESC") and in drawings and specifications the Borough may from time to time furnish Licensee. (See Drawings A-01 to A-11.)
2. **Service Drop Clearance:** From the pole to the home/building the parallel minimum separation between the Borough's service drops and communications service drops shall be twelve (12) inches, per NESC 235C1b (exception 3). (see drawing A-5)
3. All other drop clearances at the midspan must conform to NESC table 235-6.

Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are: (a) achieved at poles located on both ends of the span; and (b) retained throughout the span.

At mid-span, a minimum of twelve (12) inches of separation must be maintained between all telecommunication cables that meet NESC rule 230E1 (includes common phone, CATV, and fiber optic cables lashed to an effectively grounded messenger strand, or self-supporting cables).

NESC table 235-6 requires:

- 12" from neutral (by exception #16)
 - 30" from supply lines carrying 0 to 8.7 kV (secondary)
 - 30" plus 0.4" per kV in excess of 8.7 (primary)
4. **Vertical Risers:** All Risers, including those providing 120/240 volt power for Licensee's equipment enclosure, shall be placed on the quarter faces of the Pole and must be installed in conduit with weatherhead (if possible), attached to the Pole with stand-off brackets. A two- (2) inch clearance in any direction from cable, bolts, clamps, metal supports, and other equipment shall be maintained. (See Drawings A-02 and A-04.)
 5. **Climbing Space:** A clear Climbing Space must be maintained at all times on the face of the

Pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of the Borough Pole. Licensee's cable/wire Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole quarter faces. (See Drawing A-09.)

6. **Pedestals and Enclosures:** Every effort should be made to install Pedestals, vaults and/or Enclosures at a minimum of four (4) feet from Poles or other Borough Facilities, or the distance specified by the Borough, whichever is greater.

C. Down Guys and Anchors

1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the Borough's Poles by Licensee's Attachments. Anchors must be guyed adequately.
2. Anchors and guy wires must be installed on each Borough Pole where an angle or a dead-end occurs. Licensee shall make guy attachments to Poles at or below its cable Attachment. No proposed anchor can be within four (4) feet of an existing anchor without written consent of the Borough.
3. Licensee may not attach guy wires to the anchors of the Borough or third-party user without the anchor owner's specific prior written consent.
4. No Attachment may be installed on a Borough Pole until all required guys and anchors are installed. No Attachment may be modified, added to, or relocated in such a way as will materially increase the stress or loading on the Borough's Poles until all required guys and anchors are installed.
5. Licensee's down guys, if needed, shall be bonded, to the vertical ground wires of the Borough's Pole, in accordance to NESC rule 92C. If there is no vertical ground present at the pole, the connections to the system neutral are to be made by the Borough as an item of Make-Ready Work. The Borough will determine if guys should be grounded or insulated.

D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in Pennsylvania, certifying that Licensee's aerial cable design fully complies with the NESC and the Borough's Construction Standards and any other applicable federal, state or local codes and/or requirements.
2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of the Borough's Facilities and other Attaching Entities' facilities that exist on the Poles without regard to the condition of the existing facilities.

E. Miscellaneous Requirements

1. **Cable Bonding:** Licensee's messenger cable shall be bonded according to NESC rule 92C1 as a minimum, or at every pole with a vertical ground, as determined by the Borough. If no ground exists on a pole to be bonded, Licensee shall install a Pole ground in accordance with the attached detail drawing. (See Drawings A-03 to A-04.)
2. **Customer Premises:** Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.
3. **Communication Cables:** All Communications cables/wires not owned by the Borough shall be attached within the Communications space that is located 40 inches below the lowest Borough conductors. (See Drawings A-01 through A-11.)
4. **Riser Installations:** All Licensee's Riser installations shall be in Borough-approved conduit materials and placed on stand-off brackets. Ground wires may be attached directly to Pole. (See Drawings A-02 to A-04.)
5. **Tagging:** All Licensee's cables shall be identified with a band-type communications cable tag or other identification acceptable to the Borough at each Attachment within twelve (12) inches of the Pole. The communications tag shall be consistent with communication industry standards and shall include at least the following: Licensee name, emergency contact number, and cable type. At the discretion of the Borough, Tags shall be color-coded to permit identification of Attaching Entity by observation from the ground.

F. Borough Construction Drawings and Specifications

1. Refer to the attached Borough Construction Drawings, and obtain additional construction specifications from the Borough in accordance with its requirements.
2. Apply the Borough's construction drawings and specifications in accordance with the NESC, NEC, and any other federal, state, or local code requirements.

G. Distributed Antenna System

1. The applicant is responsible for responding to any and all community concerns or complaints related to the antenna, including aesthetic appearance, health concerns due to radio frequency emissions, etc.
2. Applicants seeking to attach pole-top antennas must provide the Borough with the following:
 - Spec sheets (including typical attachment drawings) and design information for the equipment proposed for attachment;
 - Maps detailing locations for proposed attachment.
3. The Borough must approve the design and mounting requirements for all pole-top, and other type antennas.
4. The Borough must approve all pole locations selected for antenna placement.

5. Proposed pole-top antenna locations must have adequate pole space and not exceed the pole's maximum loading. The applicant is solely responsible for all associated make-ready costs needed to bring the pole into compliance.
 - Only one antenna will be allowed on a pole.
6. Poles selected for pole-top antennas must meet the following criteria
 - Must be a tangent pole;
 - Poles selected must not have existing equipment (regulators, gang switches, capacitors, etc.);
 - Pole must be readily accessible by bucket truck;
 - Minimum of a class 3 pole.
7. Antennas must be a minimum of 5 feet above the highest electric attachment.
 - Pole extensions are not permitted.
 - In most cases, the pole must be changed out.
 - The Applicant will be responsible for the cost of the pole-loading analysis (if required by the Borough).
 - In the event the total height of the pole with the antenna attachment exceeds 60 feet, NESC rule 250D shall apply to the pole-loading analysis.
8. All pole-top antennas will be installed by the Borough or a contractor approved by the Borough.
9. A new ground rod is required at all pole-top antenna locations.
10. Antenna riser cables and grounds must be installed in a minimum of Schedule 40 conduit not larger than 2 inches.
11. All antenna power sources must have a lockable disconnect installed, to allow for the antenna power source and any back-up power sources to be disconnected. The attacher must provide the Borough with access to the disconnect by providing keys or combination to the lock. Disconnect and meter boxes must be installed according to the Borough's standards.
12. Where required, two RF warning signs must be installed. One RF warning sign must be placed at eye level, a second sign must be placed at the pole top, just beyond where the safe approach distance ends. The sign must include the owner's name, contact number, and the approach distance of the antenna
 - The Applicant must provide the Borough with documentation that confirms all RF emissions comply with applicable laws governing RF exposure levels
13. Applicants seeking to attach antennas to streetlight arms must provide the Borough with the following:
 - Spec sheets and design information for the equipment proposed for attachment;
 - Maps detailing locations for proposed attachment.
14. The Borough must review and approve the design and mounting requirements for antennas.
15. All antennas must clamp to the streetlight arm. Holes drilled in the arm or bracket will not be permitted.

**Appendix E—
Distribution Line Minimum Design Review Information and
Suggested Worksheet**

The following guidelines are provided, and corresponding information must be submitted with each Permit application for Pole Attachments on the Borough's system. The Borough may direct that certain Attachments do not require the submittal of Design Review Information. These Attachments are noted at the end of this section.

Each Permit application must include a report from a professional engineer registered to practice in the state of Pennsylvania, and experienced in electric utility system design, or a Borough-approved employee or contractor of Licensee. This report must clearly identify the proposed construction and must verify that the Attachments proposed will maintain the Borough's compliance with NESC Class B construction for the loading district as outlined in the NESC Section 25.

The Borough may or may not require that all of the following information be submitted at the time of the Permit application. The applicant shall have performed all required calculations and be ready to provide the detailed information below within fifteen (15) calendar days of notice. Applicant shall keep copies of the engineering data available for a period of twenty (20) years.

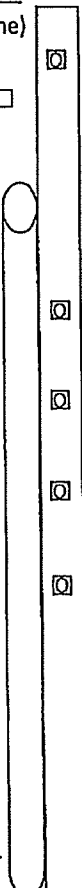
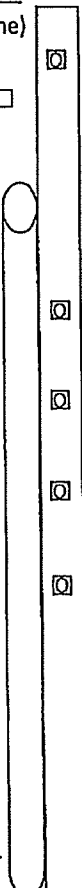
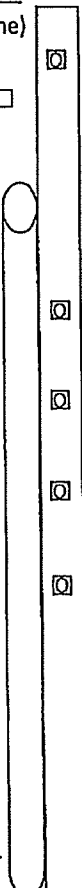
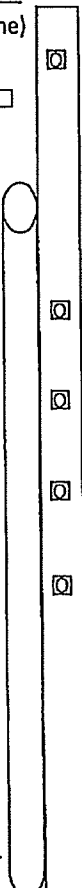
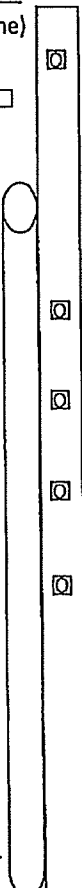
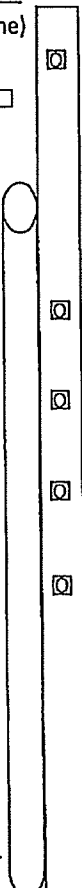
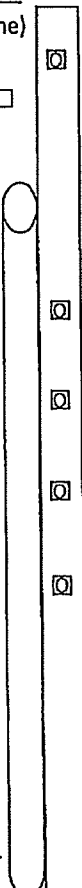
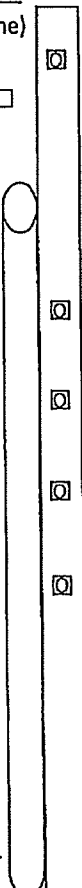
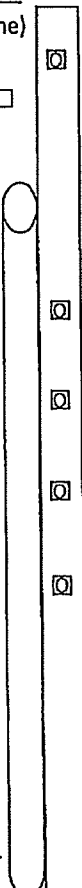
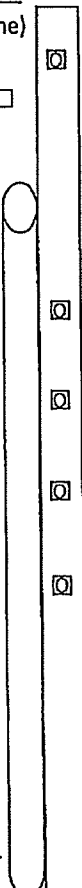
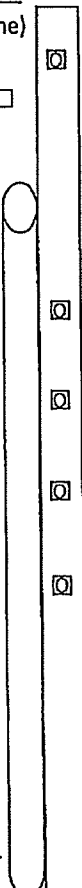
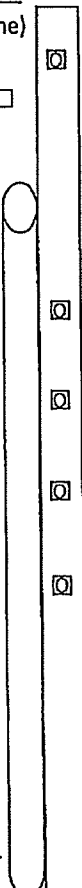
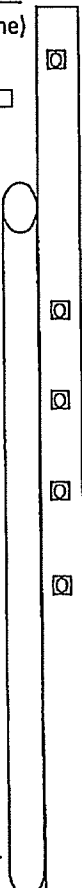
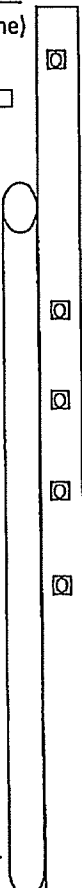
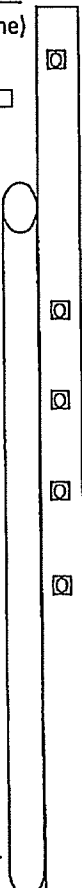
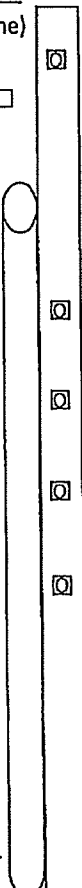
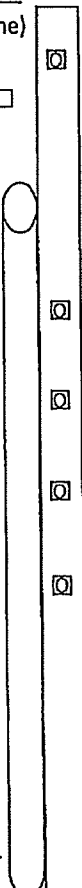
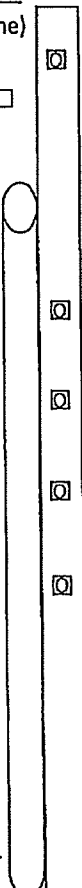
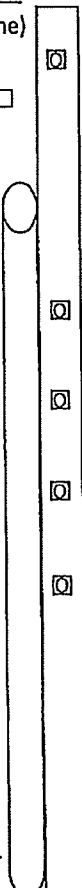
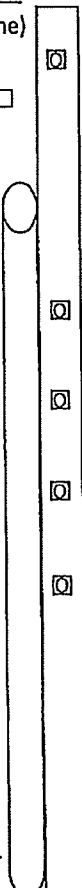
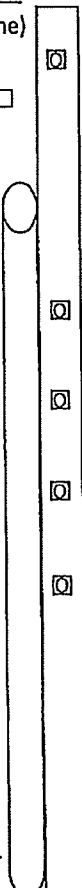
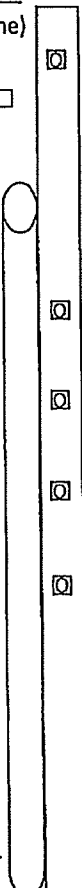
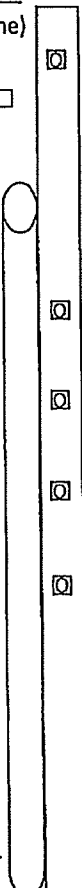
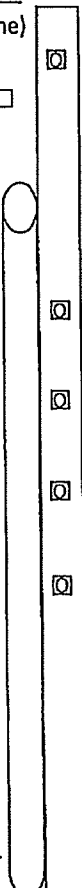
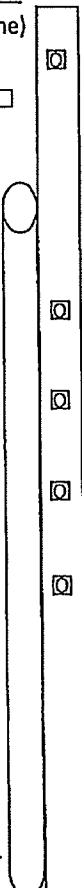
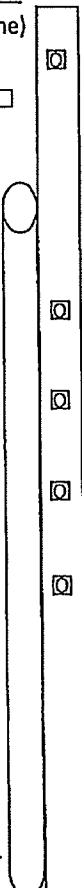
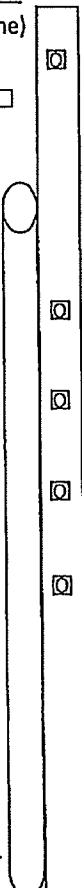
In determining compliance, the following minimum conditions shall be used in the calculations for pole strength:

1. All single-phase lines shall be assumed to have been reconductored to 4/0 AWG ACSR conductors for both phase and neutral. If a larger conductor size exists, the larger size shall be used in the calculations.
2. All three-phase lines shall be assumed to

have been to 336.4 MCM ACSR conductors for three (3) phases and neutral. If existing conductors are larger than 336.4 MCM ACSR, the larger size shall be used in the calculations.

3. All pole lines shall assume a secondary/service conductor, installed from pole to pole, of #4/0 AWG triplex cable, with an ACSR messenger. If existing conductors are larger than #4/0 AWG triplex cable, the larger size shall be used in the calculations.
4. For pole strength calculations, all poles shall be as they actually exist, or be considered Class 4 for calculations.
5. All line angles or dead ends shall be guyed and anchored. Transverse pole strength shall not be assigned to attaching pole users for line angles, i.e., pole should be viewed as being void of other cables, conductors, wires, or guys and considering only the applicant's wires/cables for guying calculations.
6. Points of attachment shall be as they actually exist on the poles.
7. For a Borough-approved joint use of anchors, the Licensee shall utilize guy insulators in its guys.
6. Lessee shall comply with any NESC and/or Borough safety factors, whichever are more conservative, in their designs. The engineer for the Permit applicant shall provide for each application the following:

BOROUGH OF MIFFLINBURG
POLE ATTACHMENT DATA SHEET - CABLE REQUEST FORM FOR BOROUGH OF MIFFLINBURG

Pole No. Mifflinburg Electric Pole #: _____ Street Location _____ City/Boro/Township Mifflinburg		Telco Pole No. _____ Name of Attacher _____ Date _____			
Attachment Type Cable <input type="checkbox"/> Cabinet <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/>					
Pole Size _____ Transformer/Device on pole <input type="checkbox"/> Yes <input type="checkbox"/> No		Street Light <input type="checkbox"/> Yes <input type="checkbox"/> No Height of Lowest Point of Street Light Bracket _____ Height of Lowest Point of Street Light Drop Loop _____ <input type="checkbox"/> Conduit Riser <input type="checkbox"/> Yes <input type="checkbox"/> No Primary <input type="checkbox"/> Yes Secondary <input type="checkbox"/> Yes			
<input type="checkbox"/> Guying will be required for angle, corner or tap pole construction		<input type="checkbox"/> Guying is not required			
NOTE: *ALL HEIGHTS ARE ABOVE GROUND LEVEL					
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border-right: 1px solid black; padding: 5px;"> <div style="text-align: right; margin-bottom: 10px;">Lowest</div> <div style="display: flex; justify-content: space-between;"> Neutral <input type="checkbox"/> or Secondary <input type="checkbox"/> (Check One) Pole Side* (Check One) </div> <div style="margin-top: 20px;"> <div style="display: flex; justify-content: space-between;"> _____ Mid-Span Ht. Front <input type="checkbox"/> / Back <input type="checkbox"/> </div> <div style="margin-top: 20px;"> <div style="display: flex; justify-content: space-between;"> _____ Mid-Span Ht. Front <input type="checkbox"/> / Back <input type="checkbox"/> </div> <div style="margin-top: 20px;"> <div style="display: flex; justify-content: space-between;"> _____ Mid-Span Ht. 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Required permits that have been obtained (insert n/a if not applicable):

- _____ (y/n) U.S. Corp of Engineers.
- _____ (y/n) Highway—state, county, city.
- _____ (y/n) Railroad.
- _____ (y/n) Local zoning boards, town boards, etc.
- _____ (y/n) Joint-use permits, if required.
- _____ (y/n) Notified other pole users of contacts or crossings.

Confirm that you have:

- _____ (y/n) Obtained appropriate franchise(s).
- _____ (y/n) Obtained pole/anchor easements from landowners.
- _____ (y/n) Obtained crossing and overhang permits.
- _____ (y/n) Obtained permit to survey R/W.
- _____ (y/n) Completed State of Department of Transportation requirements.
- _____ (y/n) Placed permit number on plans.
- _____ (y/n) Complied with Underground Facility Location requirements.
- _____ (y/n) Included sag/tension data on proposed cable.

Calculations are based upon the latest edition of the NESC and the latest editions of the requirements of the state of Pennsylvania.

It is Licensee's responsibility to obtain all necessary permits and provide the Borough with a copy of each.

The engineer for the Permit applicant shall provide for each Pole(s) the following information:

Project ID

Pole number _____ [if pole tag missing, contact Borough]

Pole class _____ [existing—i.e., 4, 3, 2...]

Pole size _____ [existing—i.e., 35, 40...]

Pole type _____ [Southern Yellow Pine, Douglas Fir...]

Pole fore span _____ [feet]

Pole fore span direction _____ [degrees from Magnetic North]

Pole back span _____ [feet]

Pole back span direction _____ [degrees from Magnetic North]

Calculated bending
moment at ground level _____ [ft-lbs]

Existing:

Power phase condition _____ quantity of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ feet above ground line

Power neutral condition _____ quantity of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ feet above ground line

Power sec condition _____ quantity of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ feet above ground line

Power service #1 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

Power service #2 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

Power service #3 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

Telco #1 cables _____ qty of _____ dia @ _____ ft above ground line

Telco service #1 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

Telco service #2 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

CATV #2 cables _____ qty of _____ dia @ _____ ft above ground line

CATV service #1 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

CATV service #2 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

User #3 cables _____ qty of _____ dia @ _____ ft above ground line

User #4 cables _____ qty of _____ dia @ _____ ft above ground line

User #5 cables _____ qty of _____ dia @ _____ ft above ground line

User #6 cables _____ qty of _____ dia @ _____ ft above ground line

Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Proposed:

Proposed cables _____ qty of _____ dia @ _____ ft above ground line

fore and back span direction _____ ° _____ ' _____ " , _____ ° _____ ' _____ "

Proposed cables _____ qty of _____ dia @ _____ ft above ground line

fore and back span direction _____ ° _____ ' _____ " , _____ ° _____ ' _____ "

Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Equipment #2 type _____ qty of _____ size @ _____ ft above ground line

AGL=Above Ground Level

The minimum vertical clearance under all loading conditions measured from the proposed cable to ground level on each conductor span shall be stated above. Variations in topography resulting in ground elevation changes shall be considered when stating the minimum vertical clearance within a given span.

Calculated pole bending moment at ground level: _____ [ft-

lbs] Pole breaking bending moment at ground level: _____ [ft-

lbs] Calculated transverse safety factor: _____ [ratio should be greater than 1.00]

Proposed loading data [provide similar data for each cable proposed]

A. Weight data (cable and messenger)

1. Vertical weight, bare = _____ [# /ft]

B. Tension data (final tensions on messenger)

1. NESC maximum load for area of construction: _____ [lbs]

2. 60° F, NO wind: _____ [lbs]

Permit applicant's engineer shall provide for each transverse guy, or dead end to which guys and/or anchors are attached, the following information:

Pole number _____

Calculated cable messenger tension under NESC maximum loading conditions _____ [lbs]

If connection is:

A dead end, is it a single or double? _____ [S, D]

A change in tension, what is change? _____ [lbs]

A line angle, what is angle change? _____ [degrees]

What is tension change at angle? _____ [lbs]

For each dead end:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each change in tension:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each line angle:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each anchor:

Anchor distance to nearest anchor _____ [feet]

Calculated anchor tension _____ [lbs]

Rated anchor strength _____ [lbs]

Soil composition _____ [sandy, loam, clay, rock]

For each dead end:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each change in tension:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each line angle:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each anchor:

Anchor distance to nearest anchor _____ [feet]

Calculated anchor tension _____ [lbs]

Rated anchor strength _____ [lbs]

Soil composition _____ [sandy, loam, clay, rock]