

A REGULAR MEETING

Of The

TRAVERSE CITY LIGHT AND POWER BOARD

Will Be Held On

TUESDAY, August 12, 2014

At

5:15 p.m.

In The

COMMISSION CHAMBERS
(2nd floor, Governmental Center)
400 Boardman Avenue

Traverse City Light and Power will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon notice to Traverse City Light and Power. Individuals with disabilities requiring auxiliary aids or services should contact the Light and Power Department by writing or calling the following.

Stephanie Tvardek
Administrative Assistant
1131 Hastings Street
Traverse City, MI 49686
(231) 932-4543

Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
(231) 922-4940

Posting Date: 8-7-14
4:00 p.m.

AGENDA

Pledge of Allegiance

1. Roll Call

2. Consent Calendar

The purpose of the consent calendar is to expedite business by grouping non-controversial items together to be dealt with by one Board motion without discussion. Any member of the Board, staff or the public may ask that any item on the consent calendar be removed therefrom and placed elsewhere on the agenda for full discussion. Such requests will be automatically respected. If an item is not removed from the consent calendar, the action noted in parentheses on the agenda is approved by a single Board action adopting the consent calendar.

- a. Consideration of approving minutes of the Regular Meeting of July 22, 2014. (Approval recommended) (p. 4)
- b. Consideration of approving amended Board Policies:
 1. Private Use of Public Property Policy. (Approval recommended) (Arends/Schroeder) (p. 9)
 2. Volunteer Work, Use of Department Equipment Policy. (Approval recommended) (Arends/Schroeder) (p. 10)
- c. Consideration of authorizing Wi-Fi Power and Space Agreement. (Approval recommended) (Menhart) (p. 11)

Items Removed from the Consent Calendar

a.

3. Unfinished Business

- a. Reconsideration of Heritage M-72 Wind Turbine Counterproposal. (Arends) (p. 21)

4. New Business

- a. Consideration of approving Employment of Relatives Policy. (Arends/Schroeder) (p. 26)
- b. Consideration of awarding bid for Building B addition. (Arends/Bob Sommerville, AAI, Inc.) (p. 28)
- c. Consideration of authorizing a Pole Attachment License Agreement with Extenet Systems, Inc. (Myers-Beman/Menhart) (p. 31)

5. Appointments

- a. Consideration of establishing an Energy Optimization Plan Ad Hoc Committee. (Arends/John Taylor) (verbal)

6. Reports and Communications

- a. From Legal Counsel.
- b. From Staff.
 - 1. Future power supply planning process – next steps. (Arends) (p. 88)
 - 2. Strategic Plan quarterly update. (All staff) (p. 92)
 - 3. Proposed cancelation of the August 26, 2014 regular meeting. (Taylor) (verbal)
- c. From Board.

7. Public Comment

/st

**TRAVERSE CITY
LIGHT AND POWER BOARD**

Minutes of Regular Meeting
Held at 5:15 p.m., Commission Chambers, Governmental Center
Tuesday, July 22, 2014

Board Members -

Present: Barbara Budros, Jim Carruthers, Jan Geht, Pat McGuire, Bob Spence

Absent: Jeff Palisin, John Taylor

Ex Officio Member -

Present: Jered Ottenwess, City Manager

Others: Tim Arends, Karla Myers-Beman, Kelli Schroeder, Rod Solak, Stephanie Tvardek, Jessica Wheaton, Blake Wilson

The meeting was called to order at 5:15 p.m. by Vice Chairman Geht.

Item 2 on the Agenda being Consent Calendar

Moved by McGuire, seconded by Carruthers, that the following actions, as recommended on the Consent Calendar portion of the Agenda, be approved:

- a. Minutes of the Regular Meeting of June 24, 2014.
- b. Resolution to Amend Board Rule 2.

CARRIED unanimously. (Palisin, Taylor absent)

Items Removed from the Consent Calendar

None.

Item 3 on the Agenda being Old Business

None.

Item 4 on the Agenda being New Business

Vice Chairman Geht announced he would recuse himself from the discussion and vote regarding agenda item 4a. In the absence of the Chairman and Vice Chairman, Secretary Tim Arends presided over this item.

- a. Consideration of M-72 Wind Turbine Sale Counter Offer.

The following individuals addressed the Board:

Tim Arends, Executive Director

Rick Wilson, Vice President of Operations, Heritage Sustainable Energy

Moved by Spence, seconded by Budros, that the Board authorizes the Chairman and Secretary to execute a counterproposal to Heritage Sustainable Energy for the sale of the M-72 wind turbine; subject to approval as to substance by the Executive Director and as to form by General Counsel.

The following individuals from the public addressed the Board:

Roy Henderson, Owner WLDR radio station, Ratepayer

Roll Call:

Yes – Budros, Carruthers, Spence

No – McGuire

Abstained – Geht

Motion failed

Item 5 on the Agenda being Reports and Communications

A. From Legal Counsel.

None.

B. From Staff.

1. Tim Arends and Karla Myers-Beman presented a Transmission Underground vs. Overhead cost comparison.

The following individuals addressed the Board:

Jered Ottenwess, City Manager

2. Tim Arends presented the 2013-14 Capital Improvements Plan annual report.

The following individuals addressed the Board:

Jered Ottenwess, City Manager

3. Jessica Wheaton presented the 2013 Energy Optimization and Renewable Energy annual report.
4. Karla Myers-Beman presented the 2013-14 third quarter financial report.
5. Jessica Wheaton provided a report on the Cherry Festival Renewable Energy Program.

C. From Board.

1. Jim Carruthers asked if the M-72 wind turbine sale counter offer agenda item could be brought back to another board meeting with full attendance. Tim Arends explained this would require the consent of an approver and dissenter of the motion made for agenda item 4a – there was no consent.

Item 6 on the Agenda being Public Comment

No one from the public commented.

There being no objection, Vice Chairman Geht declared the meeting adjourned at 6:46 p.m.

/st

Tim Arends, Secretary
LIGHT AND POWER BOARD

DRAFT



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Kelli Schroeder, Manager of HR & Communications
Date: August 6, 2014
Subject: Amended Policies

Staff has begun a thorough review of the existing TCL&P Board policies to determine those that need to be updated. The intent is to bring to the Board proposed policy amendments on a quarterly basis until all the necessary revisions have been made.

Included in your packet are two policies that staff is proposing be revised with the following recommended modifications:

1. **Private Use of Public Property Policy.** In order to avoid confusion as to what and when public property may be used for private purposes and to further mitigate the utility's risk of liability, staff is proposing the removal of all language that would allow for private use of public property under any and all circumstances.
2. **Volunteer Work, Use of Department Equipment, and Public Relations Projects Policy.** As indicated in the policy, Light and Power encourages involvement in the community. However, in order to mitigate the utility's risk of liability, staff is proposing the removal of language that allows for off duty use of public property and limiting it only to volunteer work that occurs during working hours as approved by the supervisor.

Staff recommends approval of the amended policies as presented. These items are appearing on the Consent Calendar as they are deemed by staff to be non-controversial items. Approval of the items on the Consent Calendar means you agree with staff's recommendations.

(RECOMMENDED MOTIONS ON NEXT PAGE)

FOR THE LIGHT & POWER BOARD MEETING OF AUGUST 12, 2014

If any member of the Board or the public wishes to discuss any one of these matters, other than clarifying questions, the items, individually, should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation, the following motions would be appropriate:

1. PRIVATE USE OF PUBLIC PROPERTY POLICY:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD ADOPTS THE AMENDED PRIVATE USE OF PUBLIC PROPERTY POLICY AS PRESENTED WITH AN IMMEDIATE EFFECTIVE DATE.

2. VOLUNTEER WORK, USE OF DEPARTMENT EQUIPMENT, AND PUBLIC RELATIONS PROJECTS POLICY:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD ADOPTS THE VOLUNTEER WORK, USE OF DEPARTMENT EQUIPMENT, AND PUBLIC RELATIONS PROJECTS POLICY AS PRESENTED WITH AN IMMEDIATE EFFECTIVE DATE.

Light and Power Department
City of Traverse City, MI
Adopted: August 23, 2005

Amended:

PRIVATE USE OF PUBLIC PROPERTY POLICY

The Charter of the City of Traverse City, §156, prohibits any officer or employee from devoting any City property or labor to his/her own personal use. The Traverse City Light & Power Board adopts this policy to implement that Charter provision. The Board recognizes that Traverse City Light & Power property must be protected and preserved and the risk of liability exposure limited to the extent possible.

Therefore, the following is the policy of the Traverse City Light & Power Department:

1. All Department officers, employees, independent contractors and unpaid interns are prohibited from using any Department tools, equipment, facilities, vehicles or labor for their own personal use, or any use not directly related to the business of the utility.
2. ~~If a request is made and is approved by the appropriate Department Superintendent prior to use, department equipment or labor may be used for projects of the State, a local unit of government, or a charitable organization. The State, local unit of government, or charitable organization using the equipment or labor shall provide such liability insurance as deemed appropriate by the Executive Director, including naming the department, its officers and employees as additional named insured's. The Executive Director shall consult with the Department's insurance carrier to determine reasonable insurance requirements.~~

This policy supersedes all prior policies in conflict herewith, including but not limited to the Volunteer Work Policy adopted on August 13, 1996 and revised _____.

Timothy J. Arends
Executive Director and Secretary
Traverse City Light and Power Board

Light and Power Department
City of Traverse City, MI
Adopted: August 13, 1996

Amended:

**VOLUNTEER WORK, USE OF DEPARTMENT EQUIPMENT, AND
PUBLIC RELATIONS PROJECTS POLICY**

The Light and Power Board encourages employees to become involved in community activities which will reflect positively upon the Light and Power Department. To that end, the following shall apply:

1. ~~During off-duty hours employees may utilize Light and Power equipment, for which they are trained, to perform volunteer work for projects for local units of government and charitable organizations. Requests for the use of equipment shall be approved by the appropriate superintendent. Employees utilizing Light and Power equipment for such purposes shall be responsible for any damages or liability which may accrue through its use.~~
2. ~~During working hours Administrative employees shall be paid to perform charitable work for local units of government and charitable organizations with the prior approval of their supervisor, subject to the needs of the Light and Power workload.~~
- 3.1. During working hours Light and Power **Administrative and** hourly employees shall be paid to perform charitable work for local units of government and charitable organizations with the prior approval of their **supervisor** superintendent, subject to the needs of the Light and Power workload. Under no circumstances shall overtime **or double-time** be paid for these activities **unless an hourly employee has been requested by Light and Power to report for volunteer work out of the scope of their normal working hours.**
- 4.2. Light and Power equipment may be used for charitable work for local units of government and charitable organizations during working hours with the approval of the appropriate **supervisor** superintendent, subject to the needs of the Light and Power workload.

Timothy J. Arends
Executive Director and Secretary
Traverse City Light and Power



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Scott Menhart, Manager of Telecom & Technology
Date: August 7, 2014
Subject: Wi-Fi Power and Space Agreements

The engineering and design of the Wi-Fi project calls for several root sites that need to host equipment. These sites are non-TCL&P assets and therefore must enter into an agreement for power and space. Attached is the approved Power and Space Agreement from General Counsel for your review. Aspen Wireless, the Wi-Fi contractor, is currently in the process of developing the actual designs for the sites, which will later be the exhibits to the proposed Agreement. With the timing of the project, staff thought it was best to bring the proposed Agreement to the Board for approval, prior to finalizing the exhibits. The Agreements will be for the length of the Wi-Fi Project.

The root sites that the Agreement will be for are:

- The Governmental Center
- The Hardy Parking Deck
- Old Town Parking Deck
- The Opera House
- Clinch Park Marina
- NMC East Hall
- FIM Building

Staff recommends the Board agree to the terms of the proposed Agreement for the sites listed above as presented and authorizes the Executive Director to execute said Agreements as needed. This item is appearing on the Consent Calendar as it is deemed by staff to be non-controversial. Approval of the item on the Consent Calendar means you agree with staff's recommendations.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation, the following motions would be appropriate:

(RECOMMENDED MOTION ON NEXT PAGE)

FOR THE LIGHT & POWER BOARD MEETING OF AUGUST 12, 2014

MOVED BY _____, SECONDED BY _____,

**THAT THE BOARD APPROVES THE POWER AND SPACE AGREEMENTS
BETWEEN TRAVERSE CITY LIGHT & POWER DEPARTMENT AND THE SITES
LISTED ABOVE FOR WI-FI SERVICES, AND FURTHER AGREES TO THE TERMS
AND CONDITIONS AS SET FORTH IN THE AGREEMENT; AND FURTHER
AUTHORIZES THE EXECUTIVE DIRECTOR TO EXECUTE SAID AGREEMENTS,
SUBJECT TO APPROVAL AS TO FORM BY GENERAL COUNSEL.**

COMMUNICATIONS EQUIPMENT SPACE AND POWER LEASE

THIS LEASE ("Lease") is entered into on _____, 2014 ("Effective Date"), by and between _____ ("Owner"), and **TRAVERSE CITY LIGHT AND POWER DEPARTMENT**, a Michigan municipal electric utility ("TCL&P"). TCL&P and Owner may also be referred to herein as the "Parties" and each as a "Party." Owner and TCL&P agree as follows:

- 1. LEASED PREMISES.** In accordance with the provisions herein, Owner does hereby lease to TCL&P the space described on Attachment A as, and referred to herein as, the "Leased Premises," located in Owner's building described on Attachment A ("Building"), for the purposes of installing, operating, maintaining, repairing and replacing communications equipment, radios, antennas and related equipment and fixtures (collectively, "Equipment"). TCL&P shall also have the right to use ducts, conduit, risers and other areas of the Building as reasonably necessary to install, operate and maintain facilities to connect the Equipment with other TCL&P facilities, including without limitation TCL&P's facilities in any public right of way adjacent to the Building. TCL&P shall have the right to install, mount and otherwise configure the Equipment and related facilities to ensure that TCL&P's operational and engineering requirements are met. TCL&P shall have the right to use means reasonably necessary to affix the Equipment and related facilities to the Building, including without limitation installation of mounting bolts or screws. Owner shall ensure that any equipment of Owner or any other person in or on the Building does not interfere with the Equipment and related facilities. Owner shall not allow access to, or any use of, the Leased Premises by any person other than TCL&P and its agents and contractors, except as may be required in an emergency or as necessary for maintenance of the Building by Owner.
- 2. ELECTRIC POWER.** Owner shall provide continuous electric power as required to operate, maintain and repair any Equipment or facilities in or on the Leased Premises and other facilities referenced in this Lease, at no charge to TCL&P. Owner shall pay all charges for such electric power when due. TCL&P shall have the right to use such power for the operation of any Equipment or facilities referenced in this Lease. If a tenant in the Building is paying for electric power and fails to make payments which may result or have resulted in a shutoff, Owner agrees to maintain or promptly restore electric power to the Leased Premises.
- 3. TERM.** This Lease shall begin on the Effective Date and continue for the number of years specified on Attachment A ("Initial Term"). After the Initial Term, this Lease shall automatically renew for additional one (1) year periods (each, a "Renewal Term"), on the same terms and conditions, until terminated by either Party, effective upon the next occurring anniversary of the Effective Date, by notice of termination given not less than one hundred and eighty (180) days prior to such next occurring anniversary of the Effective Date. Notwithstanding any other provision of this Lease, TCL&P shall have the right to terminate this Lease without any penalty or further liability upon thirty (30) days notice to Owner if (i) TCL&P determines that the Leased Premises is not appropriate or suitable for its operations for economic, environmental or technological reasons, or (ii) TCL&P is unable to obtain or maintain any license, permit or other governmental approval necessary or desirable for the installation or operation of the Equipment,

or (iii) the Building or Leased Premises is, in TCL&P's reasonable judgment, damaged or destroyed so as to interfere with the effective use of the Equipment.

4. RENT. The rent for this Lease shall be the rental amount specified on Attachment A ("Rent"), which shall be payable as specified on Attachment A. No fee, charge, payment or additional rent shall be required to be paid by TCL&P, other than the Rent. Rent for any partial period shall be prorated. TCL&P may prepay all or any portion of the Rent for the Initial Term and/or any Renewal Term.

5. USE. TCL&P may use the Leased Premises for installation, operation, maintenance, repair and replacement of the Equipment and related facilities. Owner covenants and agrees that TCL&P shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease, without disturbance or interference by Owner or any other person, subject to the terms and conditions of this Lease. TCL&P and its agents, contractors and third parties authorized by TCL&P shall have access to the Leased Premises at all times during the term of this Lease, which access shall include, without limitation, access to any Equipment or facilities referenced in this Lease. Owner shall maintain the Building in good condition during the term of this Lease. Owner shall deliver possession of the Leased Premises to TCL&P on the Effective Date.

6. TENANT COOPERATION. If the Building is occupied by a tenant or tenants, the Owner agrees to use its best efforts to have all affected tenants execute a Tenant Cooperation Agreement in substantially the form as attached hereto. If under the terms of a lease between the Owner and a tenant, the tenant is responsible for payment of electricity. Owner agrees that part of the rent shall be paid by TCL&P to the tenant, and the amount paid to the Owner shall be reduced by that amount. The tenant's allocation of rent for electricity is shown on Attachment A.

7. REPRESENTATIONS AND WARRANTIES. Owner represents and warrants that (i) it is a duly organized and validly existing Michigan _____, (ii) it has full power and authority to enter into this Lease and perform its obligations hereunder, and (iii) it has all permits, authorizations and consents necessary to lease the Leased Premises to TCL&P as provided herein. TCL&P represents and warrants that (i) it is a duly organized and validly existing Michigan downtown development authority (ii) it has full power and authority to enter into this Lease and perform its obligations hereunder, and (iii) it has all permits, authorizations and consents necessary to use the Leased Premises as provided herein.

8. HOLD HARMLESS. TCL&P will be responsible for, and shall promptly repair, any damage to the Leased Premises or Building caused by the installation, operation or maintenance of TCL&P's Equipment or facilities. TCL&P agrees to indemnify, defend and hold harmless Owner from and against any claim for personal injury or property damage caused by TCL&P or its agents or contractors while on site at the Leased Premises or Building in connection with TCL&P's exercise of its rights under this Lease.

9. INSTALLATION AND OPERATION OF EQUIPMENT. Owner agrees that (i) TCL&P or its contractor(s) shall have the right to install, operate, administer, configure,

maintain, repair, protect, replace, remove and manage the Equipment and related facilities at TCL&P's sole discretion and expense, including the right to install, mount and otherwise configure the Equipment and related facilities to ensure that TCL&P's operational and engineering requirements are met, (ii) Owner shall allow TCL&P or its contractors access to the Equipment and related facilities on a 24 hours per day, 7 days per week basis, (iii) upon termination of this Lease, TCL&P shall have the right, for a period of ninety (90) days after such termination, to remove the Equipment and related facilities and/or abandon in place any such Equipment or related facilities; and (iv) Owner shall not install any amplifier, enhancer, repeater or other device in or on the Equipment or related facilities. Owner also agrees that it (i) shall, prior to installation of the Equipment and related facilities, obtain all required permits and approvals to allow TCL&P or its contractors to install, maintain, replace, remove and operate the Equipment and related facilities, (ii) shall ensure that all modifications, handling, maintenance and repair of the Equipment and related facilities, and access to the Equipment and related facilities, is restricted solely to TCL&P and its contractors, (iii) shall not use or allow any use of the Building in any way that interferes with the Equipment or related facilities (including without limitation any radio frequency interference), or TCL&P's ability to exercise its rights under this Lease, (iv) shall not use or allow any use of the Building for installation or operation of radio equipment operating in any frequency that interferes with, or creates the likelihood of interference with, TCL&P's Equipment, including without limitation any radio equipment operating in any frequency exempt from FCC licensing and/or any radio equipment operating in the 900MHz, 2.4GHz, 3.65GHz, 4.9GHz, 5.1 – 5.9GHz, 24GHz and/or 60GHz frequencies, (v) shall provide to the Equipment and related facilities, at Owner's sole cost, all required commercial electric power and backup electric power, (vi) shall allow TCL&P to connect the Equipment and related facilities to other TCL&P equipment and facilities by cabling and other appropriate means.

10. RECORDING. TCL&P may record this Lease or a Memorandum of Lease.

11. TAXES. Owner shall pay all real property taxes and assessments upon the Leased Premises, provided, however, that TCL&P shall pay or request an exemption from any taxes or proportion thereof attributable to the Equipment and related facilities of TCL&P in or on the Building and the Property.

12. ELECTRONIC NOTICE. The parties agree to conduct this transaction by electronic means. This Agreement may be executed by providing an electronic signature under the terms of the Uniform Electronic Transactions Act. This Agreement may not be denied legal effect or admissibility as evidence solely because it is in electronic form, permits the completion of the business transaction referenced herein electronically instead of in person, or has been stored electronically. As an alternative to physical delivery, any document, including any signed document or written notice may be delivered in electronic form only by email. Documents with original signatures shall be provided upon request of any party.

13. BINDING EFFECT. This Lease and the provisions herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

14. TRANSFER OF LEASED PREMISES. This Lease shall run with the Leased Premises and any transfer by Owner shall be promptly reported to TCL&P.

15. NO PARTNERSHIP OR JOINT VENTURE. This Lease does not render either Party the agent or legal representative of the other Party and does not create a partnership or joint venture between TCL&P and Owner.

16. NO THIRD-PARTY BENEFICIARY. This Lease shall not be deemed to provide any person not a Party hereto (including without limitation any customer, guest, invitee or licensee of Owner) with any remedy, claim, right of action, or other right. The parties do not intend by this Lease to create any third-party beneficiaries.

17. MICHIGAN LAW. The rights, obligations and remedies of the Parties as specified under this Lease shall be interpreted and governed in all respects by the laws of the State of Michigan.

18. COST AND ATTORNEY FEES. If any suit or action is instituted or prosecuted to interpret or enforce any provision of this Lease, the prevailing Party in such suit or action shall be entitled to recover from the other Party costs, expenses and reasonable attorney fees, in addition to all other sums allowed by law, both at trial and on appeal.

19. AMENDMENT. This Lease may not be changed orally, but only by an agreement in writing signed by TCL&P and Owner in accordance with this Section 10. No agreement hereafter made between the Parties shall be binding on either Party unless reduced to writing and signed by an authorized officer of the Party sought to be bound thereby.

20. NO WAIVER. Any waiver of any term or condition of this Lease shall not operate as a waiver of any other such term or condition or as any continuing waiver, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof.

21. SEVERABILITY. Any provision of this Lease that is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

22. SURVIVAL. The terms and provisions of this Lease that by their nature require performance by either Party after the termination or expiration of this Lease, including, but not limited to, limitations of liability and exclusions of damages, shall be and remain enforceable notwithstanding such termination or expiration of this Lease for any reason whatsoever.

23. GOVERNMENTAL IMMUNITY. Nothing in this Lease shall be construed as limiting or waiving any of the rights and immunities that state or federal law grants to TCL&P and its affiliates.

24. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between TCL&P and Owner with respect to the subject matter hereof, and supersedes all prior and contemporaneous communications, representations or agreements whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed.

IN WITNESS WHEREOF, Owner and TCL&P have each caused this Lease to be duly executed as of the date first written above.

OWNER _____

(signature)
By: _____
(printed name)

(signature)
By: _____
(printed name)

Title: _____
(printed)

Title: _____
(printed)

STATE OF MICHIGAN)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, the _____ of _____, a _____ corporation.

Given under my hand and official seal this ____ day of _____, 2014.

Notary Public, _____
_____ County, _____
Acting in _____ County
My commission expires: _____

TRAVERSE CITY LIGHT AND POWER DEPARTMENT

By: _____
Timothy J. Arends
Its: Executive Director

STATE OF MICHIGAN)
) ss.
COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Timothy J. Arends, Executive Director, Traverse City Light and Power Department, a Michigan municipal electric utility.

Given under my hand and official seal this _____ day of _____, 2014.

Notary Public, _____
_____ County, Michigan
Acting in Grand Traverse County
My commission expires: _____

Attachment A

Building:

Address: _____

Legal Description: _____

Leased Premises: _____

_____ including space for conduits and as shown on attached diagram

Initial Term of Lease: From _____ to _____ inclusive.

Annual Rent: \$ _____

Tenant allocation of above Rent: \$ _____

Rent Payments due: _____

TCL&P Contact Information:

Contact Person: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Owner Contact Information:

Contact Person: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

MEMORANDUM OF LEASE

A Communications Equipment Space and Power Lease has been signed and is dated _____, 2014, having _____ as the Owner and leasing to Traverse City Light and Power Department, a Michigan municipal electric utility ("TCL&P") the leased premises described on Attachment A for the installation and operation of certain communications equipment. The term of this Lease is described on Attachment A, and it will automatically renew for additional one year periods until terminated by either party in advance of the anniversary of the Lease. A copy of the Lease may be examined at TCL&P, 1131 Hastings Street, Traverse City, Michigan. The Lease allows TCL&P to record a Memorandum of Lease.

Traverse City Light and Power Department

By: _____
Timothy J. Arends
Its: Executive Director

STATE OF MICHIGAN)
) ss.
COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Timothy J. Arends, Executive Director, Traverse City Light and Power Department.

Notary Public, _____
_____ County, Michigan
Acting in Grand Traverse County
My commission expires: _____

Prepared by:
W. Peter Doren, Esq.
Sondee, Racine & Doren, PLC
310 W. Front Street, Suite 300
Traverse City, MI 49684

When Recorded Return to:

Preparer



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
Date: August 5, 2014
Subject: Re-Consideration of M-72 Wind Turbine Counterproposal



At the July 22, 2014 Board Meeting the Board voted 3-1 (one abstention) to offer a counterproposal to Heritage Sustainable Energy (“Heritage”) for the purchase of the M-72 Wind Turbine; Heritage was the sole bidder through the competitive bidding process. That motion failed as four votes are required for approval.

Since that meeting I received written communications from two Board Members (one voting in favor, and one voting against the motion) asking that the item be put on a future agenda for re-consideration. The concerns of the dissenting Board Member to the July 22nd motion were related to future TCL&P obligations regarding the turbine, and financial concerns related to a power purchase agreement. Staff has since met with Heritage and was able to address those concerns. They will be specifically addressed through incorporation into a power purchase agreement that would be considered by the Board at a future meeting. Please see the attached “Bid Clarification” memo for specific details.

General Counsel has assisted staff in preparing a counterproposal for your consideration of approval. Heritage will have 60 days to inspect the unit and make a determination on following through with its offer to purchase. If their decision is to proceed with the purchase, staff will negotiate a power purchase agreement for the Board’s consideration of approval. Please provide direction, if any, on expectations the Board may have in that agreement.

Because the offer from Heritage keeps this historic unit in its current location, providing renewable energy to TCL&P, and has become a landmark gateway to Leelanau County, staff believes a counteroffer is appropriate. Removing the utility from ownership of the unit also removes the responsibility of operation and maintenance costs from TCL&P, and the utility’s liability of future costs of removal/remediation/replacement. In addition, Heritage has the expertise to operate and maintain the unit.

If after Board discussion you agree with staff’s recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____, THAT
THE BOARDS ACTION AT ITS JULY 22, 2014 MEETING RELATED TO THE M-72 WIND
TURBINE SALE BE RESCINDED AND THAT THE BOARD AUTHORIZES THE CHAIRMAN
AND SECRETARY TO EXECUTE A COUNTERPROPOSAL TO HERITAGE SUSTAINABLE
ENERGY FOR THE SALE OF THE M-72 WIND TURBINE; SUBJECT TO APPROVAL AS TO
SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.**



August 4, 2014

BID CLARIFICATION

RE: Clarification to the Bid Proposal previously submitted by Heritage Sustainable Energy, LLC, June 16, 2014 - Purchasing of the M-72 Wind Turbine.

Dear Tim – Pursuant to our meeting Wednesday July 30, 2014, this letter shall serve as further clarification to our June 16, 2014 Bid for the purchase of the TCLP M-72 Wind Turbine. As we discussed, there were several issues raised by the TCLP Board at their July 22, 2014 meeting. These specific issues are as follows:

- 1) The Board would like indemnity from, and further assurance of the proper decommissioning of the wind turbine via the posting by Heritage of a decommissioning performance bond or similar financial instrument.
- 2) The Board wants assurance that the energy price established in the future M-72 Wind Turbine Power Purchase Agreement (PPA) does not exceed TCLP's average annual cost of wholesale power. They would also like the PPA price to be able to be renegotiated after 5 years.
- 3) The Board would like the PPA to be transferable with the consent of both parties.

As further clarification to our submitted Bid, Heritage agrees to work closely with the TCLP staff and Board to address the above concerns. We are confident that they are resolvable through the negotiation of the Wind Turbine Purchase and Sale Agreement and the Power Purchase Agreement during the contingency period.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Wilson", is written over a faint, illegible typed name.

Rick Wilson
Vice President of Operations

121 East Front Street, Suite 200, Traverse City, Michigan 49684
Telephone: 231-935-4500 Facsimile: 231-929-0242
www.heritagewindenergy.com

Counterproposal for Purchasing M-72 Wind Turbine

Offer:

The Traverse City Light and Power Department (TCL&P) offers to sell and assign related easements to Heritage Sustainable Energy, LLC (Heritage), upon the following terms and contingencies:

1. Price. The price shall be \$1,100 (One Thousand One Hundred Dollars).
2. M-72 Wind Turbine. The M-72 Wind Turbine shall include all related components, software, spare parts, transformers, and the electrical connection at the turbine to the transmission line which shall remain the property of TCL&P.
3. First Stage Contingencies. Within 60 (sixty) calendar days after written acceptance of this offer, Heritage shall have satisfied or waived the following contingencies:
 - a. Complete due diligence related to structural and mechanical inspection and condition of the wind turbine and related components showing them to be in a condition satisfactory to Heritage. All persons inspecting the windmill and turbine generator will be required to execute a TCL&P Release of all Claims.
 - b. Review all TCL&P contractual agreements related to the turbine and related components showing them to be in a condition satisfactory to Heritage.
 - c. Written waiver of the right of first refusal for the wind turbine generator by Terry K. Lautner and Catheryn L. Lautner.
4. Second Stage Contingencies. Upon satisfaction or waiver of the above contingencies, Heritage and TCL&P shall have 60 (sixty) days to agree in writing on the following:
 - a. A purchase power agreement for TCL&P to purchase power generated by the wind turbine which may be assignable by either party.
 - b. Written conveyance documents and assignments for the wind turbine, related components, and easements.
5. Unsatisfied or Un-waived Contingencies. If any of the above contingencies are not satisfied or waived within the above time periods, either party upon written notice to the other party, may cancel this agreement.
6. Closing. Upon satisfaction or waiver of all contingencies, closing and transfer shall occur within seven (7) calendar days.

TRAVERSE CITY LIGHT AND POWER
DEPARTMENT

Dated: _____

By: John Taylor
Its: Chairman

Dated: _____

By: Timothy J. Arends
Its: Secretary

Acceptance:

Heritage Sustainable Energy, LLC, accepts Traverse City Light and Power Department's Counterproposal and agrees to purchase the M-72 Wind Turbine upon the terms as above stated.

HERITAGE SUSTAINABLE ENERGY,
LLC

Dated: _____

By: Rick Wilson
Its: Vice President of Operations

APPROVED AS TO SUBSTANCE:

Timothy J. Arends
Executive Director

APPROVED AS TO FORM:

W. Peter Doren
General Counsel

RELEASE OF ALL CLAIMS

The undersigned Participant, being of lawful age, in consideration of permission granted to the undersigned by the TRAVERSE CITY LIGHT AND POWER DEPARTMENT (TCL&P), to participate in the touring of and climbing in the windmill and turbine generator, hereby releases TCL&P, its officers and employees from all actions, causes of action, damages, rights, costs, loss of service, claims, demands, expenses and compensation whatsoever, which the undersigned, the undersigned's heirs, executors, administrators, or assigns may have against TCL&P, its officers and employees, for all personal injuries known or unknown which the undersigned has or may incur by participating in the above-described activity.

The above activity is strenuous and I have consulted with my doctor and am not under any medical advice to not undertake strenuous activity or climbing.

I HAVE READ THIS RELEASE, UNDERSTAND ALL ITS TERMS AND EXECUTE IT VOLUNTARILY AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE. I UNDERSTAND THAT BY SIGNING THIS FORM, I ACKNOWLEDGE THAT THE ABOVE ACTIVITIES HAVE CERTAIN RISKS ASSOCIATED WITH THEM AND I FULLY UNDERSTAND THOSE RISKS AND AM WILLING TO ACCEPT THEM.

Signed this _____ day of _____, 20____.

CAUTION: READ BEFORE SIGNING

Witness:
Signature: _____
Name: _____
[print]

Participant:
Signature: _____
Name: _____
[print]
Address: _____

Telephone: _____



June 16, 2014

Bid Proposal for: Purchasing of the M-72 Wind Turbine

Heritage Sustainable Energy, LLC ("Heritage") shall pay one thousand one hundred dollars (\$1,100.00) for the purchase of the TCLP wind turbine in Section 31, T28N-R11W, Elmwood Township, Leelanau County, Michigan inclusive of, but not limited to, all related components, software, spare parts, transformer(s), assignment of valid land use permits and land use agreements (including the 1995 Easement for Electrical Facilities that was granted to TCLP), interconnection cable and interconnection to the TCLP distribution system.

Closing of this acquisition will only occur if Heritage, at Heritage's sole discretion, is satisfied that the following contingencies have been met:

- 1) Heritage shall have 60 days to complete its due diligence related to the structural and mechanical condition of the wind turbine and related components;
- 2) TCLP will make available, and Heritage will have 45 days to complete a review of any TCLP contractual agreements related to the wind turbine and/or related components;
- 3) Heritage and TCLP shall have 60 days to agree to a mutually acceptable offtake agreement related to any future power generated by the wind turbine and its input into the TCLP electrical distribution system.
- 4) Heritage and TCLP shall have 60 days to agree to a mutually acceptable assignment and bill of sale for the wind turbine and related components.

Once Heritage acknowledges that the contingency issues stated above have been satisfied, then the closing and transfer of the wind turbine and related components from TCLP to Heritage will occur within seven (7) days. Upon closing Heritage will assume full decommissioning liability of the wind turbine and the restoration of the turbine site.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Wilson", is written over a faint, larger version of the same signature.

Rick Wilson

Vice President of Operations



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Kelli Schroeder, Manager of HR & Communications
Date: August 6, 2014
Subject: Employment of Relatives Policy

Currently, TCL&P has no formalized guidelines when it comes to hiring and employing relatives. In order to ensure the integrity of the utility and its employees in both its hiring practices and existing employment relationships, staff is proposing the adoption of a new Employment of Relatives Policy which has been enclosed for your review.

As indicated in the previous memo under Consent, staff intends to review all existing policies to determine what revisions are needed. The review will also help staff determine if any gaps exist that would warrant the addition of new policies. The recommended Employment of Relatives Policy is one area that Staff felt needed to be addressed.

If after Board discussion you agree with staff's recommendation, the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD ADOPTS THE EMPLOYMENT OF RELATIVES POLICY AS PRESENTED WITH AN IMMEDIATE EFFECTIVE DATE.

Light and Power Department
City of Traverse City, MI
Adopted:

EMPLOYMENT OF RELATIVES POLICY

PURPOSE: This policy is intended to ensure effective supervision, internal discipline, security, safety, and positive morale in the workplace. It also seeks to avoid the perception of favoritism, conflicts in loyalty, discrimination, the appearance of impropriety, and conflicts of interest.

APPLICABLE TO: All Employees

PROCEDURE: No person will be hired for a position who is a relative of that position's manager or supervisor, or of the Executive Director or TCL&P Board Member. Relatives may be eligible for employment with the Utility in other situations, only if doing so would not reasonably be anticipated to result in actual or potential problems in security, safety or morale, or would not create the likelihood of an actual or perceived conflict of interest now or in the future. This prohibition applies to any and all types of employment relationships including, but not limited to, full-time, part-time, irregular part-time, seasonal, or temporary. Employment of a relative through a temporary employment agency is also subject to this policy.


For purposes of this policy, a relative means a person holding the following relationship to a current employee or Board Member, whether that relationship is natural, adoptive, step or foster in nature.

- | | | |
|-------------|--------------|-----------------|
| Spouse | Grandchild | Parent-in-law |
| Child | First Cousin | Son-in-law |
| Parent | Uncle | Daughter-in-law |
| Brother | Aunt | Brother-in-law |
| Sister | Niece | Sister-in-law |
| Grandparent | Nephew | |

If an employee becomes related to the manager or supervisor of his or her position, to the Executive Director or Board Member or to another employee during his or her term of employment, a review of the situation will be conducted by the Executive Director or his or her designee to resolve the matter in the best interest of TCL&P.

Timothy J. Arends
Executive Director and Secretary
Traverse City Light and Power Board



To: Light and Power Board
From: Tim Arends, Executive Director 
Date: August 4, 2014
Subject: Hastings Street Building B Addition Bid Award

In accordance with the Board's approval at its June 11, 2014 meeting, TCL&P solicited bids for an expansion of the service building (building B) at the TCL&P Hastings Street Service Center facility. These enhancements will make the space more useable for the crews and allow a better functioning workspace.

AAI, Inc. is under contract with the utility to provide services that include design development, construction documentation and bidding, and construction management. AAI, Inc. provided oversight for the bid process for general trades which included mechanical and electrical trades (Bulk Bid). A public bid opening occurred on July 29, 2014. Bid results are detailed on the attached bid tabulation sheet.

Staff is recommending that in the best interests of TCL&P the low bidder Hallmark Construction in the amount of \$267,029 be approved. Hallmark Construction will act as General Contractor and will oversee general, mechanical and electrical subcontractors work.

If the Board is in agreement with Staff's recommendation the following motion is appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE CHAIRMAN AND SECRETARY TO ENTER INTO A CONTRACT BETWEEN TCL&P (OWNER) AND HALLMARK CONSTRUCTION (CONTRACTOR) IN THE LUMP SUM TOTAL AMOUNT OF \$267,029 FOR HASTINGS STREET BUILDING B EXPANSION PROJECT; SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL; AND FURTHER AUTHORIZES THE EXECUTIVE DIRECTOR TO ADMINISTER AMENDMENTS AND CHANGE ORDERS THAT ARE IN THE BEST INTEREST OF THE UTILITY.



July 30, 2014

Traverse City Light and Power
1131 Hastings St.
Traverse City, MI 49686

Attn: Mr. Tim Arends, Executive Director

RE: Proposed Addition Bid on July 29, 2014

Dear Tim,

I have reviewed the bids from the General, Mechanical and Electrical Bidders and have conducted post-bid interviews with the low and second lowest bidders. I have reviewed Hallmark's schedule of values and discussed this with Jim Lewis, Project Manager. It appears complete.

I reviewed Hallmark's subcontractor list and recommend two changes: Northwoods to Jacklin for structural steel based on past performance- no cost change, and By the Bay Glass to Northern Michigan Glass based on past performance- add \$550.00.

There is only \$29.00 difference between Haggard's (\$34,500.00) a Charlevoix contractor and Sheren Plumbing and Heating (\$34,529.00) a Traverse City contractor. Our last experience with Haggard's at TCLP was not satisfactory. I recommend changing to Sheren Plumbing and Heating.

I recommend a lump sum contract in the amount of \$267,029.00 to Hallmark Construction in which we assign Sheren Plumbing and Heating and Windemuller Electric as subcontractors as follows:

\$193,800.00	Hallmark Construction- General
<u>\$ 550.00</u>	<u>Change to Northern Michigan Glass</u>
\$194,350.00	
\$ 34,529.00	Sheren Plumbing and Heating- Mechanical
<u>\$ 38,150.00</u>	<u>Windemuller- Electrical</u>
\$267,029.00	Contract Sum

Upon the furnishing of required bonds and insurance certificate, we will prepare a contract for construction.

Sincerely,

Robert J. Sommerville, AIAE
RJS/jv

robert j. sommerville, AIA robert l. holdeman, AIA

1004 east 8th street, traverse city, michigan 49686 231.947.0080 rel 231.947.4720 fax

Hallmark

Results	Base Bid	Alternate
General Contractors		
Hallmark	\$ 193,800	\$ 485
LTD	\$ 207,000	\$ 1,031
GTC	\$ 208,700	\$ 487
Spence	\$ 210,500	\$ 1,250
Eckler	\$ 213,000	
Comstock	\$ 232,946	
Mechanical Contractors		
Haggard	\$ 34,500	
Sheren	\$ 34,529	
D&W	\$ 34,895	
Arms & Cole	\$ 38,100	
ABI	\$ 54,600	
Electrical Contractors		
Windmuller	\$ 38,150.00	
Advantage	\$ 42,630.00	
Topline	\$ 47,540.00	

Ted Nelson

800 Hastings St.
Suite A
Traverse City, MI 49686
Office (231) 947-7824
Fax (231) 995-0114
<http://www.spencebrothers.com><image001.jpg>
<image002.jpg>



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Karla Myers-Beman, Controller *KMB*
Date: June 2, 2014
Subject: Extenet Pole Attachment Agreement

Extenet, a distributed network infrastructure company, has submitted a METRO act permit application with the City of Traverse City for access to and use of the public right-of-way within the City for installation of a fiber network with an end goal of boosting National Cell Phone Carrier's wireless data network in Traverse City. They are requesting to place 119 fiber pole attachments on TCL&P's distribution system.

Attached is a proposed Agreement for the Board's consideration that will allow Extenet to install the above proposed pole attachments. The Agreement models APPA's recommended agreement and is still subject to legal review as to form. The Agreement will have a term of five years with an automatic year-to-year renewal option, the annual pole attachment fee of \$13.50 was calculated using APPA's share cost pole attachment fee formula, and built-in annual inflationary increases based on CPI – All Urban Consumers.

The Agreement also requires the entity to underground its services if TCL&P undergrounds its services with the intention of removing the pole line.

Staff recommends the Board's approval of the Agreement between TCL&P and Extenet to allow Extenet to attach fiber to poles in the service area.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE SECRETARY AND CHAIRMAN TO EXECUTE A POLE ATTACHMENT AGREEMENT WITH EXTENET FOR THE INSTALLATION OF FIBER ON TRAVERSE CITY LIGHT AND POWER POLES PER THE REQUIREMENTS OF THE AGREEMENT AS PRESENTED, SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.

POLE ATTACHMENT LICENSE AGREEMENT FOR COMMUNICATION FACILITIES

This Pole Attachment Licensing Agreement (the "Agreement") dated this ____ day of _____, 20__ is made by and between the TRAVERSE CITY LIGHT AND POWER DEPARTMENT (hereinafter referred to as "Utility"), a Michigan municipal electric utility, 1131 Hastings Street, Traverse City, MI 49686 and _____, a _____ of the State of _____, _____ (hereinafter referred to as "Licensee").

Recitals

- A. Licensee proposes to install and maintain Communication Facilities and associated equipment, Licensee's Attachments, on Utility's Poles to provide Communication Services; and
- B. Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on Utility's Poles, provided that Utility may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard.

The parties 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 Utility 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 Utility or other federal, state or local authority with jurisdiction over Utility Facilities.
- 1.3 **Attaching Entity:** means any public or private entity, including Licensee, that pursuant to a license agreement with Utility, places an Attachment on Utility’s Pole to provide Communication Services.
- 1.4 **Attachment(s):** means Licensee’s Communication Facilities that are placed directly on Utility’s Poles, are Overlashed onto an existing Attachment , 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 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 Utility employees and contractors to safely climb, access, and work on Utility Facilities and equipment.
- 1.7 **Communications Facilities:** means wireline, including but not limited to fiber optic, copper and/or coaxial cables, utilized to provide Communication Service. This excludes any wireless mechanisms.
- 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 **Licensee:** means _____, its authorized successors and assignees.

- 1.10 **Make-Ready Work:** means all work that Utility 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 Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include Licensee's routine maintenance.
- 1.11 **Occupancy:** means the use or reservation of space for Attachments on a Utility Pole.
- 1.12 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing attached Communication Facility.
- 1.13 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not attached to Utility 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).
- 1.14 **Permit:** means written or electronic authorization (see Appendix C) by Utility for Licensee to make or maintain Attachments to specific Utility Poles pursuant to the requirements of this Agreement. Licensee's attachments made prior to the Effective Date and authorized by Utility (Existing Attachments) shall be deemed Permitted Attachments hereunder.
- 1.15 **Pole:** means a pole owned or controlled by Utility that is used for the distribution of electricity, wood poles used for street lighting, and/or Communications Service and is capable of supporting Attachments for Communication Facilities.
- 1.16 **Post-Construction Inspection:** means the inspection by Utility or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.17 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or Utility to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.

- 1.18 **Reserved Capacity**: means capacity or space on a Pole that Utility 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 Utility's electric system.
- 1.19 **Riser**: means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.20 **Tag**: means to place distinct markers on wires and cables, coded by color or other means specified by Utility 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.
- 1.21 **Utility Facilities**: means all personal property and real property owned or controlled by Utility, including Poles and related facilities.

Article 2—Scope of Agreement

- 2.1 **Grant of License**. Subject to the provisions of this Agreement, Utility grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to Utility's Poles.
- 2.2 **Parties Bound by Agreement**. Licensee and Utility agree to be bound by all provisions of this Agreement.
- 2.3 **Permit Issuance Conditions**. Utility will issue one or more Permit(s) to Licensee only when Utility determines, in its sole judgment, exercised reasonably, 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 Utility 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, Utility 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, Utility may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for Utility's future utility service. If reclaimed for Utility's use,

Utility may at such time also install associated facilities, including the attachment of communications lines for internal Utility operational or governmental communications requirements. Utility 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 other entity.

- 2.5 No Interest in Property.** No use, however lengthy, of any Utility 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 Utility's rights to Utility 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.
- 2.7 Utility's Rights over Poles.** The parties agree that this Agreement does not in any way limit Utility's right to locate, operate, maintain or remove its Poles 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.** Utility will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require Utility to install, retain, extend or maintain any Pole for use when such Pole is not needed for Utility's own service requirements.
- 2.9 Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit Utility from fulfilling any

agreement or arrangement regarding its Poles into which Utility 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 Utility's express written consent to such use. Nothing in this Agreement shall be construed to require Utility to allow Licensee to use Utility's Poles after the termination of this Agreement.

2.11 Overlapping. The following provisions apply to Overlapping:

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

2.11.2 Authorized Overlapping 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 Overlapping. Licensee shall not pay a separate Annual Attachment Fee for such Overlapped Attachment.

2.11.3 At Licensee's request, Utility may allow Overlapping to accommodate facilities of a third party, not affiliated with Licensee. In such circumstances, the third party must enter into a License Agreement with Utility, 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 Overlapping. Utility shall not grant such Permit(s) to third parties allowing Overlapping of Licensee's Communications Facilities without Licensee's consent. Authorized Overlapping 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 Overlapping third party to defray fees and charges paid by Licensee.

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

- 2.12 **Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other Utility Facilities without Utility's prior written permission. If permission is granted, all such installations shall be per 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 above-ground enclosures in order to provide sufficient space for Utility to set a replacement Pole.
- 2.13 **Non-Discrimination.** The Licensee agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of their actual or perceived race, color, religion, national origin, age, sex, height, weight marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement.
- 2.14 **No Joint Venture or Partnership.** This Agreement does not and is not intended to create a joint venture or partnership between the parties. The rights and obligations of the parties are entirely contained within this Agreement.
- 2.15 **Governmental Immunity.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Utility of any governmental immunity.
- 2.16 **Third Party Beneficiaries.** There are no intended third party beneficiaries of this Agreement.
- 2.17 **Costs and Fees.** If Utility incurs costs, including actual attorney and engineering fees, resulting from Licensee's breach of or failure to follow this Agreement or that arise from an action in a court to enforce or interpret this Agreement, Licensee shall pay Utility's costs including actual attorney and engineering fees.

Article 3—Fees and Charges

- 3.1 **Payment of Fees and Charges.** Licensee shall pay to Utility 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 any invoice it receives from Utility pursuant to this Agreement within thirty (30) calendar days after Utility issues the invoice.
- 3.3 Billing of Attachment Fee.** Utility shall invoice Licensee for the per-pole Attachment Fee annually. Utility will submit to Licensee an invoice for the annual rental period not later than July 31 of each year for the previous rental period. The initial annual rental period shall commence upon the execution of this Agreement and conclude on June 30 of the next year, and each subsequent annual rental period shall commence on the following July 1 and conclude on June 30 of the subsequent year. The invoice shall set forth the total number of Utility's Poles on/in which Licensee was issued and/or holds a 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 is not used or abandoned by Utility.
- 3.5 Late Charge.** If Utility 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 Utility, at the rate of one percent (1%) per month compounded.
- 3.6 Payment for Work.** Licensee will be responsible for payment to Utility for all work that Utility or Utility's contractors perform pursuant to this Agreement to accommodate Licensee's Communication Facilities.
- 3.7 Advance Payment.** At its sole discretion, Utility 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 Communication Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8 True Up.** Whenever Utility, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay Utility for the difference in cost, provided that Utility documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that Utility's actual cost of the activity is less than the estimated cost, Utility 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 Utility, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility'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 cost 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 Utility, Utility may either charge an additional ten percent (10%) of its costs or assess the penalty specified in Appendix A.
- 3.10 Work Performed by Utility.** Wherever this Agreement requires Utility to perform any work, Utility, 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.
- 3.12 Payment of Taxes and Fees.** Licensee shall pay promptly all taxes, assessments and permit fees lawfully levied on its property and services authorized by this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communication Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of Licensee's Communication 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 Communication 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 Utility Poles 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 Communication Facilities to impair the ability of Utility or any third party to use Utility's Poles, nor shall Licensee allow its Communication Facilities to interfere with the operation of any Utility 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 Utility's facilities in the event of a contact with such facilities. Except as provided in Paragraph 16.1, Utility shall not be liable for any actual or consequential damages to Licensee's Communication 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 Communication 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 Utility, Utility at its option, may correct such conditions. Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Utility believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of Utility's service obligations, or present an immediate threat to the physical integrity of Utility Facilities, Utility 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, Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by Utility in taking action pursuant to this Paragraph, and Licensee shall indemnify Utility 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 Utility Service.** Utility's service restoration requirements shall take precedence over any and all work operations of Licensee on Utility's Poles.

- 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 the Permit(s) and any extension to such Permit(s), Utility may void the Permit(s) and 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. If Utility uses the space for its own needs or makes them available to other parties, then from the date that Utility 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 becomes 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 Utility that removal is necessary to accommodate Utility's or another Attaching Entity's use of the affected Pole(s), 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 Utility notifies Licensee that removal is necessary to accommodate Utility's or another Attaching Entity's use of the affected Pole(s). Licensee shall give Utility 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 Utility's Poles, Licensee shall obtain from the appropriate public and/or private authority or from any property owner or other appropriate person, any required authorization to construct, operate or maintain its Communication Facilities on public or private property. Utility 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 Communication Facilities. Licensee shall defend, indemnify and reimburse Utility for all losses, costs and expenses, including reasonable attorney's fees, that Utility 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 Communication Facilities on Utility's Poles or to provide particular services.

- 5.2 Lawful Purpose and Use.** Licensee's Communication 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 Utility's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of Utility's Poles, to the extent that Licensee's Attachment would result in a forfeiture of Utility's rights. Any Permit that would result in forfeiture of Utility's rights shall be deemed invalid as of the date that Utility granted it. Further, if any of Licensee's existing Communication 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 Utility. If Licensee does not remove its Communication Facilities in question within thirty (30) days of receiving written notice from Utility, Utility may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have their right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify Utility 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 Utility 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 Utility's Pole 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 Utility 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 grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A. Licensee shall provide Utility a list of all such pre-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 Utility, 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 Utility, 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 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 Utility may require the Licensee's professional engineer to conduct a post-construction inspection that the Utility will verify by means that it deems to be reasonable.

Utility, at its discretion, may waive the requirements of this Paragraph 6.3, with respect to service drops.

6.4 Utility 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, Utility will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. Utility 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.** Utility 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 of within forty-five (45) days of receipt. For Permit Applications seeking Attachments 50 or more Poles, the Utility may require additional time to review. The Utility'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 Utility'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** Utility will complete routine Make-Ready Work within ninety (90) days of receipt of payment. If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the number of Poles, seasonal weather conditions, the Utility shall identify those factors in the Make-Ready estimate and the parties shall agree upon a reasonable timeframe for completion.
- 6.4.4** Utility may toll the time period 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, Utility 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 Utility 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.** Upon completion of the Make-Ready Work, Utility shall invoice Licensee for Utility's actual cost of such Make-Ready Work.

Alternatively, Utility, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. In such case, upon completion, Licensee shall pay Utility's actual cost of Make-Ready Work. The costs of the work shall be itemized as per Paragraph 3.9 and tried up in accordance with Paragraph 3.8.

- 7.3 Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by Utility and/or a contractor authorized by Utility to perform such work. If Utility cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within ninety (90) calendar days of Licensee's agreement to Make-Ready Work 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 Utility for such work on an annual basis.
- 7.4 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communication Facilities, Utility 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 Utility's normal work hours, Licensee will pay any resulting increased costs. Nothing in this Agreement shall be construed to require Utility to perform Licensee's work before other scheduled work or Utility service restoration.
- 7.5 Notification of Make-Ready Work.** Before starting Make-Ready Work, Utility 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 Utility's Poles, including Overlapping of existing Attachments, Licensee must obtain Utility'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 Utility's Poles 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 Communication 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

If Utility reasonably determines that a transfer of Licensee's Communication Facilities is necessary, Utility will, at its option, either require Licensee to perform such transfer at its own expense within thirty (30) calendar days after receiving notice from Utility, or perform the transfer itself, Utility shall have the right to transfer Licensee's Facilities using its personnel and/or contractors. If Licensee fails to transfer its Facilities within thirty (30) days after receiving such notice from Utility, Utility 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. Utility 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 to emergency situations. In emergency situations, Utility shall provide such advance notice as is practical, given the urgency of the particular situation. Utility 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 to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, Utility will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to, replacement of the Pole and/or rearrangement or transfer of Utility's 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 Utility the actual cost of the Make-Ready Work, performed by Utility, in accordance with Paragraph 3.9. Utility, in its discretion, may require advance payment. Licensee shall also be responsible for obtaining, and furnishing to Utility 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. If Utility receives Permit Applications for the same Pole 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 replacement of the Pole, Utility 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 Utility as specified in Appendix D. Licensee shall not attach its guy wires to Utility's anchors without prior written permission of Utility. If permission is granted, charges may apply.

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

9.4.1 If Utility 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 Communication Facilities, unless and to the extent the rearrangement or transfer is necessary in connection with Utility's reclaiming of Reserved Capacity from Licensee. Prior to making any such modification or replacement, Utility 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 Utility's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Communication Facilities, Licensee

shall pay its fair share of the costs incurred by Utility in making the space on the Poles accessible to Licensee.

9.4.2 If the modification or the 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 Communication Facilities. At the time Licensee submits a Permit Application to Utility, 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. Utility 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 Utility 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 Communication 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), Utility shall pay the costs of such modification or replacement and Licensee shall pay the costs of rearranging or transferring its Communication Facilities.

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

Article 10—Abandonment, Removal or Relocation of Utility Facilities

10.1 **Notice of Abandonment or Removal of Utility Facilities.** If Utility desires at any time to abandon, remove or underground any Utility Facilities to which Licensee's Communication Facilities are attached, it shall give Licensee notice

in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such Utility's Facilities. Notice may be limited to thirty (30) calendar days if Utility is required to remove or abandon its Utility Facilities as the result of the action of a third party and the lengthier notice period is not practical. Such notice shall indicate whether Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of the 30-day period, Licensee has not yet removed and/or transferred all of its Communication Facilities and has not entered into an agreement to purchase Utility's Facilities pursuant to Paragraph 10.2, Utility shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee's expense. Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

- 10.2 Option to Purchase Abandoned Poles.** Should Utility desire to abandon any Pole, Utility may, in its sole discretion, grant Licensee the option of purchasing such Pole at a price to be negotiated with Utility. Licensee must notify Utility in writing within thirty (30) calendar days of the date of Utility'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 Utility 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 Utility to sell Licensee Poles that Utility intends to remove or abandon.
- 10.3 Underground Relocation.** If Utility moves any portion of its aerial system underground, Licensee shall remove its Communication Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from Utility and must either relocate its affected Facilities underground with Utility or find other means to accommodate its Facilities. If Licensee does not remove its Attachment within sixty (60) days, Utility 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.
- 10.4 Governmental Requirement to Remove or Shorten.** In the event that the use of any Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, Utility shall provide sixty (60) days

notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the Attachment(s) of Licensee must be removed from the affected pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal authority, or private landowner requires discontinuance of the Pole in less than sixty (60) days, the notice provided by Utility shall be reduced accordingly. If a governmental authority requires Utility to reduce the height of a Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the Pole shall immediately terminate upon notice from Utility and Licensee shall remove its Attachments from the affected Pole at its own expense by the date specified by Utility.

Article 11—Removal of Licensee's Facilities

At the expiration or other termination of this License Agreement or individual Permit(s), or in the case of a Nonfunctional Attachment, Licensee shall remove its Communication Facilities from the affected Poles 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 Utility or this Agreement, Utility shall have the right (a) to have such facilities removed at Licensee's expense and the Utility shall be the owner of such facilities and may dispose of them in its discretion; or (b) to leave the facilities in place and take ownership of them.

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 Communication Facilities on public or private property at the location of the particular Pole(s) covered by the Permit.
- 12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment(s) and remove its Communication Facilities from the affected Pole(s), provided, however, that before commencing any such removal, Licensee must obtain Utility'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 Utility's

Facilities within thirty (30) calendar days, Utility 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.** Utility may conduct an inventory and inspection of Attachments at any time. Within thirty (30) calendar days of receiving written notice from Utility, Licensee shall correct all Attachments that Utility identifies as being out of compliance with Applicable Standards. If Utility 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.** Utility will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon Utility 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 Utility annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by Utility.

Article 14—Unauthorized Occupancy or Access

- 14.1 Penalty Fee.** If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, Utility, 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, Utility shall have the right, but not the obligation, to remove such Communication Facilities at Licensee's expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by Utility 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 Utility 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's pays its annual Attachment Fee, Licensee shall also provide the following information to Utility, using the reporting form contained in Appendix E:

- 15.1 The Poles on which Licensee has installed, during the relevant reporting period, Risers and service drops, where 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.** Utility reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its service requirements. Licensee agrees to use Utility's Poles at Licensee's sole risk. Notwithstanding the foregoing, Utility shall exercise reasonable precaution to avoid damaging Licensee's Communication Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, Utility agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the gross negligence or willful misconduct of Utility, provided, however, that the aggregate liability of Utility 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 Communication Facilities (including special, indirect, punitive or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to Utility 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 to Licensee shall defend, indemnify, and hold harmless Utility 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 Utility under any Workers Compensation Laws or under any plan for employees disability and death benefits) and expenses (including reasonable attorney's fees of Utility and all other costs and expense 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 Communication Facilities, except to the extent of Utility's negligence or willful misconduct solely giving rise to such Covered Claims. This promise of indemnification is not limited by insurance. 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 Utility 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 Communication Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes Utility 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 of 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 Procedures for Indemnification.

16.3.1 Utility 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 Utility, Utility shall give the notice to Licensee no later than fifteen (15) calendar days after Utility receives written notice of the action, suit, or proceeding.

16.3.2 Utility's failure to give the required notice will not relieve Licensee from its obligation to indemnify Utility 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 Utility, to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to Utility. Utility agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, Utility 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 Utility 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 Utility 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 Utility's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Utility's Poles or transport to Utility's Poles any hazardous substances and that Licensee's Communication 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 Communication Facilities would not release any Hazardous Substances. Licensee

and its agents, contractors, and subcontractors shall defend, indemnify and hold harmless Utility 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 Utility's Poles attributable to Licensee's use of Utility's Poles.

Should Utility's Poles be declared to contain Hazardous Substances, Utility, 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 Utility, 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.

Article 17—Duties, Responsibilities, And Exculpation

- 17.1 Duty to Inspect.** Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility's Poles and/or premises surrounding the Poles, prior to commencing any work on Utility's Poles or entering the premises surrounding such Poles.
- 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. UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. UTILITY 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 Utility Facilities. The parties understand and intend that energy generated, stored, or transported by Utility 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 Utility 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 Utility'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 Utility 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 Utility in accordance with Paragraph 3.9, for all costs and expenses that Utility incurs in complying with Licensee's request. Before Utility 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. In Licensee causes an interruption of service by damaging or interfering with any equipment of Utility, Licensee shall, at its own

expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility 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 Utility's Poles 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 Michigan 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 Utility. 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, and \$2,000,000 each occurrence.

18.1.3 **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and nonowned 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 Utility 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 Michigan 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 Utility 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. Utility shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. Utility, 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 Utility. Licensee shall defend, indemnify and hold harmless Utility 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 Utility 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 which 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 Utility 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 Utility'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

Utility 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 Utility 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 Utility, which consent shall not be unreasonably withheld.
- 20.2 **Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish Utility with 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 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 Utility.

20.3 Sub-licensing. Without Utility'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 Utility's Facilities, including Overlapping, or to place Attachments for the benefit of such third parties on Utility's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communication Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

Failure of Utility 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 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.

22.2 Dispute Resolution. If after the initial meeting the dispute regarding the meaning, operation, or enforcement of any provision of this Agreement has not been resolved, the parties agree as follows:

- (a) **Mediation.** If they are unable to resolve the dispute themselves, and before formally instituting any other dispute mechanism, they shall utilize the services of a mutually acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring them together in at least one mediation session.

- (b) Venue. All meetings, hearings and actions to resolve the dispute shall be in Grand Traverse County.

22.3 Notice. Written notice of a dispute shall be given to the other parties not later than 90 days after the occurrence giving rise to the dispute becomes known or should have become known. Negotiations and mediation shall occur within 60 days after such notice.

22.4 Business as Usual. During any dispute resolution procedure or lawsuit, the Utilities will continue providing services to each other and performing their obligations under this Agreement.

Article 23—Termination of Agreement

23.1 Utility 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 Communication 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 Communication 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 Utility; or

23.1.3 Construction, operation or maintenance of Licensee's Communication Facilities without the insurance coverage required under Article 18.

23.2 Utility 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 fifteen (15) calendar days, or such longer period as the parties may agree, and shall confirm in writing to Utility that the cited condition or conditions have ceased or been corrected, or are in the process of being corrected.

23.3 If Licensee contests the existence of the default, it may invoke the dispute resolution procedures of Article 22.

23.4 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, Utility 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, Utility may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, from any or all of Utility's Poles. In such instance, Licensee shall remain liable to Utility 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 five (5) years and, unless terminated by either party, shall automatically be renewed year to year. Either party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement before the end of the then-current term. Such a notice must be given least ninety (90) calendar days prior to the end of the then-current term.

24.2 Even after the termination of this Agreement, Licensee's removal, insurance and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communication Facilities as provided for in this Agreement.

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, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to Utility, at: Traverse City Light and Power, 1131 Hastings St., Traverse City, MI 49686, Attn: Executive Director;

If to Licensee, at: _____, _____,
_____, Attn:
_____;

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 Utility 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 Utility's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate Utility's liability to Licensee for any actions that Utility 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 Communication Facilities on Utility's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between Utility 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 Michigan.

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—Force Majeure

31.1 If either Utility 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, court orders, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, 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.

31.2 Utility 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 31.1, provided that Licensee present Utility 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 Utility under this Agreement.

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

(UTILITY)

(LICENSEE)

BY: _____

BY: _____

(Print Name) _____

(Print Name) _____

Title: _____

Title: _____

APPENDIX A—FEES AND CHARGES

Pole Attachment Fees and Charges

Effective Date ___/___/___

1. Annual Pole Attachment Fee:\$___per attachment/per year

The Annual Attachment Fees shall be adjusted annually by any change in the Index now known as “United States Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers, base period 1982–84 = 100, (CPI-U),” hereinafter referred to as the “Index.” The parties agree that the 2014 Index is _____.

2. Non-Recurring Fees:

One-time License Agreement Fee.....\$_____

Permit Application Fee\$_____ per Permit Application
(\$50.00 per pole)

Make Ready Work ChargesSee Article 3 of Agreement

Miscellaneous ChargesSee Article 3 of Agreement [or
Attach Fee Schedule for Work
Performed for the Licensee]

Inspection Fees.....See Article 3 of Agreement

3. Unauthorized Attachment Penalty Fee:

5 x annual attachment fee, per occurrence.

4. Failure to Timely Transfer, Abandon or Remove Facilities or Improperly Assign

Penalty:

1/5 annual attachment fee per day, per pole, first 30 days; after the initial 30 days the penalty shall be equal to the annual attachment fee per day, per pole.

Conduit Fees and Charges

Utility conduit not available for use

APPENDIX B—POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by each Licensee seeking to make new Attachments on Utility's Poles, or overlashing to existing pole tenant facilities on Utility's Poles. Note that no entity may make any Attachments to Utility's Poles or overlash to existing pole tenant facilities on Utility's Poles without having first entered into a binding Pole Attachment Licensing Agreement with Utility. Third parties seeking to overlash to an existing pole tenant facility must also have a written overlash agreement with the pole tenant to be overlashed. The overlash agreement must be provided to the Utility 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 utility 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 and 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 Utility 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, Utility 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 Utility and agreed to by the Licensee.
5. Upon completion of the Make-Ready Work, the Utility 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 Utility, the Licensee's professional engineer, utility-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 Utility will verify the inspection by means that it deems to be reasonable.

APPENDIX C—APPLICATION FOR PERMIT

Application Date: ____/____/____

To: **Traverse City Light and Power, 1131 Hastings Street, Traverse City, MI 49686,**
Attn: Engineering Department

Desire to: _____ Attach to Utility Pole(s) _____ Remove Attachment from Utility Pole(s)
_____ Overlash to existing facility attached to Utility Pole(s)

Permit No. _____ Superseded Permit No. _____

Number of Poles this permit _____ Sheet 1 of _____

Licensee Name: _____

Address: _____

Contact Person: _____ Phone _____

Title: _____

Utility Contact Person: _____ Phone _____

Title: _____

Narrative Description of proposed activity: _____

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's registration number and phone number are:

Name: _____ Phone _____

Registration # _____

SUBMITTED:

Licensee _____

By _____

Title _____

Date _____

Permit

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 Utility and agreed to by the Licensee.

APPROVED:

Utility _____

By _____

Title _____

Effective Date _____

APPENDIX D—SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS TO UTILITY POLES

Licensee, when making Attachments to Utility 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. Attachments and Cable Clearances:** Licensee's Attachments on Utility 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 Utility 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 Utility's service drops and communications service drops shall be twelve (12) inches, per NESC 235C1B (exception 3). (See drawing A-5)
- 3.** All other drops 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 Utility 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 Utility Facilities, or the distance specified by the utility, 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 Utility's Poles by Licensee's Attachments. Anchors must be guyed adequately.
2. Anchors and guy wires must be installed on each Utility 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 Utility.
3. Licensee may not attach guy wires to the anchors of Utility or third-party user without the anchor owner's specific prior written consent.
4. No Attachment may be installed on a Utility 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 Utility Poles until all required guys and anchors are installed.
5. Licensee's down guys, if needed, shall be bonded to vertical ground wires of Utility'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 utility as an item of Make-Ready Work. Utility 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, register in the State of Michigan, certifying that Licensee's aerial cable design fully complies with the NESC and Utility'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 Utility'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 utility. 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 Utility shall be attached within the Communications space that is located 40 inches below the lowest Utility conductors.. (See Drawings A-01 through A-11)
4. **Riser Installations:** All Licensee Riser installations shall be in utility-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 Utility 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 Utility, Tags shall be color-coded to permit identification of Attaching Entity by observation from the ground.

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 Utility's system. Utility 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 Michigan, and experienced in electric utility system design, or a utility-approved employee or contractor of Licensee. This report must clearly identify the proposed construction and must verify that the Attachments proposed will maintain Utility's compliance with NESC Class B construction for the loading district as outlined in the NESC Section 25.

Utility 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 reconducted to 2 ACSR conductor for both phase and neutral.
2. All three-phase lines shall be assumed to have been to 336 ACSR conductor for three (3) phase and neutral.
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.
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 Utility-approved joint use of anchors, the Licensee shall utilize guy insulators in it guys.
8. Lessee shall comply with any NESC and/or Utility safety factors, whichever are more conservative, in their designs. The engineer for the Permit applicant shall provide for each application the following confirmations:

ζ . 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.

ζ Confirm that you have:

- _____ (y/n) Obtained appropriate franchise(s).
- _____ (y/n) Obtained pole/anchor easements from land owners.
- _____ (y/n) Obtained crossing and overhang permits.
- _____ (y/n) Obtained permit to survey R/W.
- _____ (y/n) Completed State of Michigan Department of Transportation (MDOT) requirements.
- _____ (y/n) Placed permit number on plans.
- _____ (y/n) Complied with Miss Dig 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 Michigan.

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

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

- ζ Project ID _____
- ζ Pole number _____ [if pole tag missing, contact Utility]
- ζ Pole class _____ [existing—*i.e.*, 4, 3, 2...]
- ζ Pole size _____ [existing—*i.e.*, 35, 40...]
- ζ Pole type _____ [Southern Yellow Pine, Douglas Fir...]
- ζ Pole fore span _____ [feet]
- ζ Pole fore span direction _____ [degrees from Magnetic North]
- ζ Pole back span _____ [feet]
- ζ Pole back span direction _____ [degrees from Magnetic North]
- ζ Calculated bending moment at ground level _____ [ft-lbs]

Existing:

- ζ Power phase condition _____ qty of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ ft above ground line
- ζ Power neutral condition _____ qty of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ ft above ground line
- ζ Power secondary condition _____ qty of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ ft above ground line
- ζ Power service #1 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "
- ζ Power service #2 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "
- ζ Power service #3 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

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

ζ Telco service #1 _____ qty of _____ size@ _____ ft above ground line

ζ @ _____ ° _____ ' _____ ”

ζ Telco service #2 _____ qty of _____ size@ _____ ft above ground line

ζ @ _____ ° _____ ' _____ ”

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

ζ CATV service #1 _____ qty of _____ size@ _____ ft above ground line

ζ @ _____ ° _____ ' _____ ”

ζ CATV service #2 _____ qty of _____ size@ _____ ft above ground line

ζ @ _____ ° _____ ' _____ ”

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

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

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

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

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

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

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

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

Proposed:

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

ζ fore and back span direction _____ ° _____ ' _____ ”, _____ ° _____ ' _____ ”

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

ζ fore and back span direction _____ ° _____ ' _____ ”, _____ ° _____ ' _____ ”

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

ζ Equipment #1 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:

ζ Pole number _____

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

If connection is:

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

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

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

ζ What is tension change at angle? _____ [lbs]

For each dead end:

ζ Point of attachment for guy hook _____ [feet AGL]

- ζ Anchor distance from pole _____ [feet]
- ζ Calculated guy tension _____ [lbs]
- ζ Rated guy working strength _____ [lbs]

For each change in tension:

- ζ Point of attachment for guy hook _____ [feet AGL]
- ζ Anchor distance from pole _____ [feet]
- ζ Calculated guy tension _____ [lbs]
- ζ Rated guy working strength _____ [lbs]

For each line angle:

- ζ Point of attachment for guy hook _____ [feet AGL]
- ζ Anchor distance from pole _____ [feet]
- ζ Calculated guy tension _____ [lbs]
- ζ Rated guy working strength _____ [lbs]

For each anchor:

- ζ Anchor distance to nearest anchor _____ [feet]
- ζ Calculated anchor tension _____ [lbs]
- ζ Rated anchor strength _____ [lbs]
- ζ Soil composition _____ [sandy, loam, clay, rock]

APPENDIX F—FIELD DATA SUMMARY SHEET INSTRUCTIONS

<u>Column</u>	<u>Instructions</u>
Utility Pole Number	If a Pole stencil is not in place, it may be left for Utility if the accompanying sketch is adequate to determine the location.
Communication Company's	
Plan Sheet Pole Number	This must correspond with the, plan sheet or Pole Sketch pole identification number.
Pole Height and Class	List the present pole height and class and list the proposed Pole height and class if it is necessary for Utility to replace the Pole for clearance, etc.
Guy Attachments	All unbalanced loading on Poles must be guyed. Attachments to Utility's anchors will not be allowed.
Attachment Height	Communication Company attachment height above ground level. List guy lead in feet..
Inches Below Utility	The number of inches Communications Company is to be attached below Utility while maintaining clearance as required in Item #4.
Span Length	List the back span length for each attachment.
Inches Sag	List the messenger sag for the design listed on the cover sheet at 60 degrees Fahrenheit.
Ground Clearance	List the ground clearance at the low point of the back span. Must not be less than the National Electric Safety Code (latest edition).

exteneit
YOUR NETWORKS. OUR TEAM.
3030 Westerville Rd, Suite 340
Lincoln, IL 60032
www.exteneit.com

PROJECT INFORMATION:
NC-MI-SMALL CELL - VZW
DAS NETWORK
HIGH LEVEL OVERVIEW
ADDITIONAL ROUTE
TRAVERSE CITY, MI 49664

CURRENT ISSUE DATE: **05/30/14**
ISSUED FOR: **PERMITTING**

BY: DATE: DESCRIPTION: REV:

BY	DATE	DESCRIPTION	REV
ACI	05/29/14	REVIEW	0

PLANS PREPARED BY:

ACI
American Consulting & Engineering, Inc.
271-800-825-4ACI
10000 Westerville Rd, Suite 340
Lincoln, MI 48188

ACI NUMBER: TC-HLO 2
CONSULTANT:

SEAL OF APPROVAL:

SHEET TITLE:

SHEET NUMBER: **0**
REVISION: **05/30/14**



CAUTION: ACCORDING TO THE CITY OF TRAVERSE, ANY WORK TO BE PERFORMED IN THE PUBLIC RIGHT-OF-WAY MUST BE APPROVED PRIOR TO THE START OF CONSTRUCTION.

SYMBOL LEGEND:

- HUB SITE (H)
- ADDITIONAL SITE (A)
- BASE STAKE (B)
- ADDITIONAL STAKE (D)
- ADDITIONAL STAKE (E)
- ADDITIONAL STAKE (F)
- ADDITIONAL STAKE (G)
- ADDITIONAL STAKE (H)
- ADDITIONAL STAKE (I)
- ADDITIONAL STAKE (J)
- ADDITIONAL STAKE (K)
- ADDITIONAL STAKE (L)
- ADDITIONAL STAKE (M)
- ADDITIONAL STAKE (N)
- ADDITIONAL STAKE (O)
- ADDITIONAL STAKE (P)
- ADDITIONAL STAKE (Q)
- ADDITIONAL STAKE (R)
- ADDITIONAL STAKE (S)
- ADDITIONAL STAKE (T)
- ADDITIONAL STAKE (U)
- ADDITIONAL STAKE (V)
- ADDITIONAL STAKE (W)
- ADDITIONAL STAKE (X)
- ADDITIONAL STAKE (Y)
- ADDITIONAL STAKE (Z)

PROJECT TOTAL:

- ADDITIONAL STAKE (H)
- ADDITIONAL STAKE (A)
- ADDITIONAL STAKE (B)
- ADDITIONAL STAKE (D)
- ADDITIONAL STAKE (E)
- ADDITIONAL STAKE (F)
- ADDITIONAL STAKE (G)
- ADDITIONAL STAKE (H)
- ADDITIONAL STAKE (I)
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- ADDITIONAL STAKE (V)
- ADDITIONAL STAKE (W)
- ADDITIONAL STAKE (X)
- ADDITIONAL STAKE (Y)
- ADDITIONAL STAKE (Z)

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DATE	REVISION NOTES

FILENAME: 1995-6260
 LOCATION: Towson City, MD
 PROJECT: NC-M-SM-LICEL-VZM
 DATE: 5/30/2014





1-800-622-4441
 www.aci.com

SYMBOL	FOOTAGE TYPE	SYMBOL	FTG	MI
1	PROPOSED FIBER	1	1333	0.26
2	STAKE	2	1	0.01
3	STAKE	3	1	0.01
4	STAKE	4	1	0.01
5	STAKE	5	1	0.01
6	STAKE	6	1	0.01
7	STAKE	7	1	0.01
8	STAKE	8	1	0.01
9	STAKE	9	1	0.01
10	STAKE	10	1	0.01
11	STAKE	11	1	0.01
12	STAKE	12	1	0.01
13	STAKE	13	1	0.01
14	STAKE	14	1	0.01
15	STAKE	15	1	0.01
16	STAKE	16	1	0.01
17	STAKE	17	1	0.01
18	STAKE	18	1	0.01
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32	STAKE	32	1	0.01
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34	STAKE	34	1	0.01
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37	STAKE	37	1	0.01
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39	STAKE	39	1	0.01
40	STAKE	40	1	0.01
41	STAKE	41	1	0.01
42	STAKE	42	1	0.01
43	STAKE	43	1	0.01
44	STAKE	44	1	0.01
45	STAKE	45	1	0.01
46	STAKE	46	1	0.01
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49	STAKE	49	1	0.01
50	STAKE	50	1	0.01

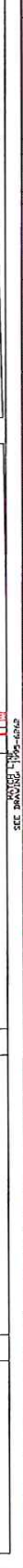


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NO.	DATE	REVISION NOTES

FILENAME: 1995-6264
 PROJECT: NC-M-SMALCEL-VZM
 LOCATION: TOVERS CH, MI
 DATE: 5/30/2014



SYMBOL	FOOTAGE TYPE	SYMBOL	CT	FTG	MI	FOOTAGE TYPE	SYMBOL	CT	FTG	MI
	1 PROPOSED FIBER									
	2 STORM									
	3 STORM DRAINING									
	4 SANITARY SEWER									
	5 FIBER STORAGE									

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ACI
 Aerial Cartography, Inc.
 1-800-623-4641

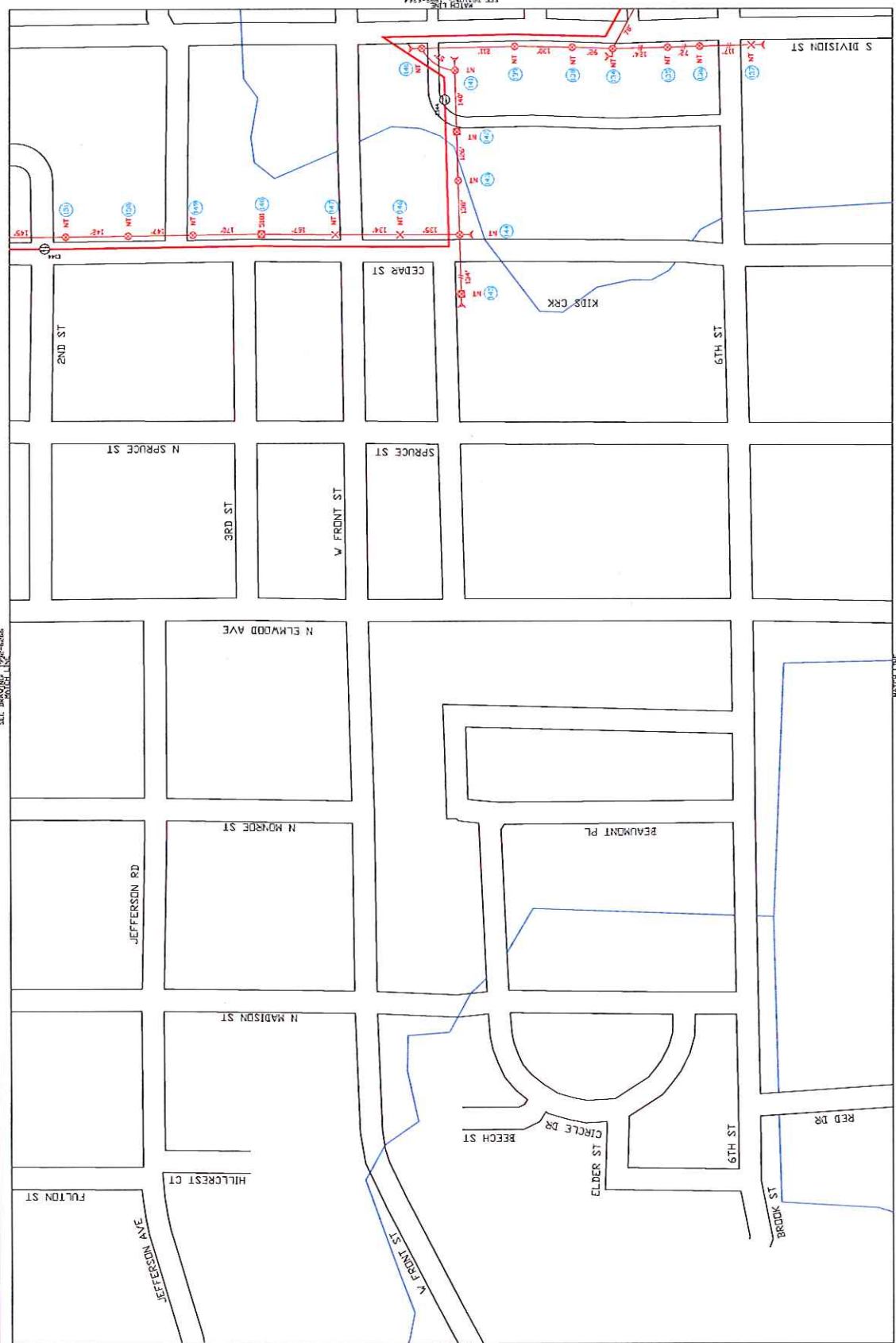
SEE DRAWING 1995-6264
 SEE DRAWING 1995-6264
 SEE DRAWING 1995-6264
 SEE DRAWING 1995-6264

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DATE	REVISION NOTES

FILENAME: 1992-6264
 LOCATION: Traders Ckwy, MI
 PROJECT: NC-M-SMALLEL-V2M
 DATE: 5/30/2014

1992-6264
 1992-6264
 1992-6264



1-800-433-4441

SYMBOL	CT	FTG	MI	FOOTAGE TYPE	SYMBOL	CT	FTG	MI
(Symbol)	19	2490	6.47	IMPROVED TIEB	(Symbol)	0	0	0
(Symbol)	0	0	0	STRANS	(Symbol)	0	0	0
(Symbol)	0	0	0	STRANS_LINING	(Symbol)	0	0	0
(Symbol)	0	0	0	STRANS_GLV	(Symbol)	0	0	0
(Symbol)	0	0	0	CONDUIT_DIRECTIONAL_BURST	(Symbol)	0	0	0

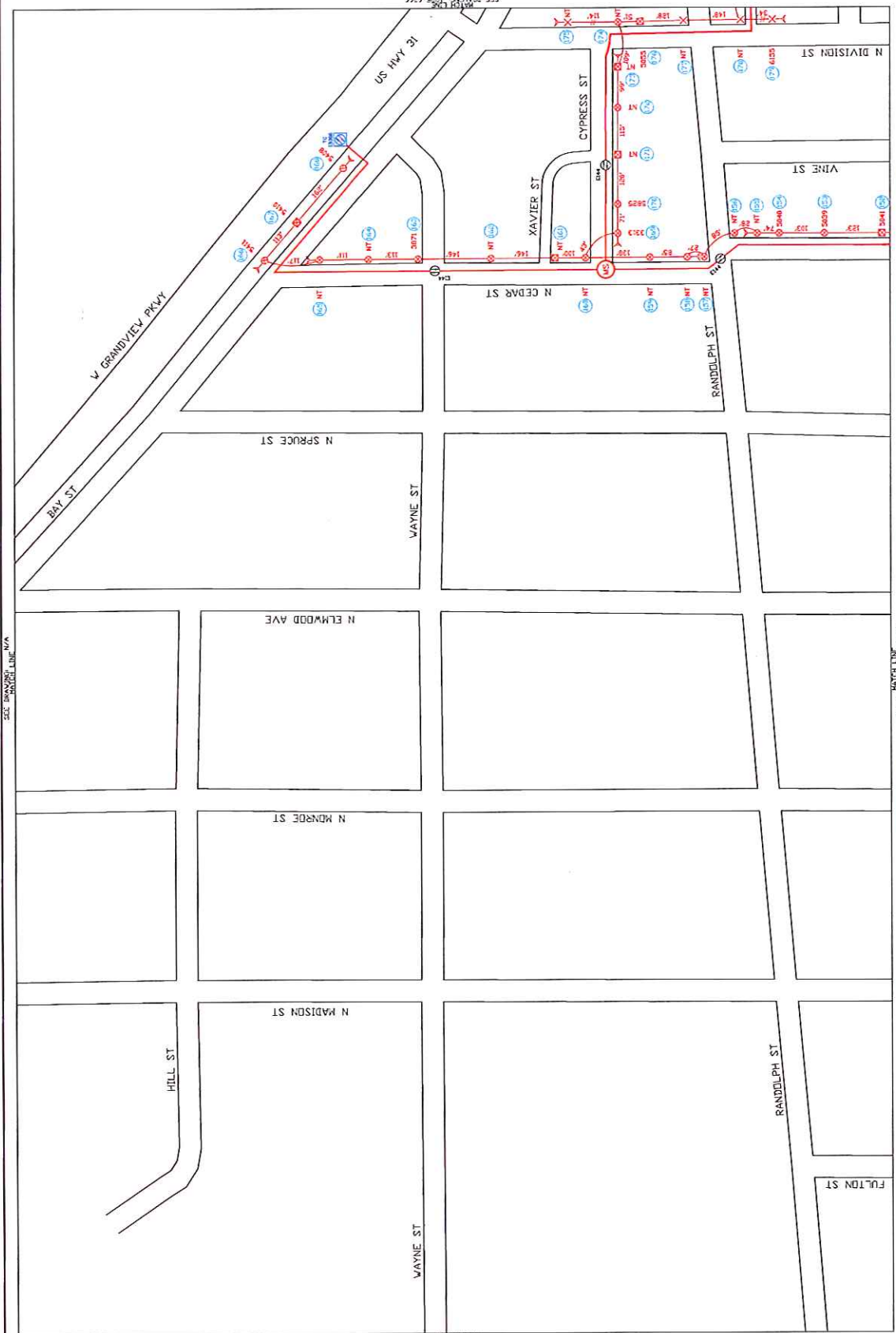
SYMBOL	CT	FTG	MI	FOOTAGE TYPE
(Symbol)	0	0	0	LARGE VALV
(Symbol)	0	0	0	VALV
(Symbol)	0	0	0	HIGH POLE
(Symbol)	0	0	0	RISEY
(Symbol)	0	0	0	MANHOLE
(Symbol)	0	0	0	HAND POLE
(Symbol)	0	0	0	PPD
(Symbol)	0	0	0	SMALL VALV
(Symbol)	0	0	0	PP BOX
(Symbol)	0	0	0	EXISTING ANCHOR
(Symbol)	0	0	0	NEW ANCHOR
(Symbol)	0	0	0	EXISTING SP ANCHOR
(Symbol)	0	0	0	NEW SP ANCHOR
(Symbol)	0	0	0	D.H. GUY
(Symbol)	0	0	0	P.P. GUY
(Symbol)	0	0	0	STEEL POLE
(Symbol)	0	0	0	CONCRETE POLE
(Symbol)	0	0	0	CANTILEVER TWP POLE
(Symbol)	0	0	0	CANTILEVER TRNG POLE
(Symbol)	0	0	0	CANTILEVER ANT POLE
(Symbol)	0	0	0	CANTILEVER AT TRNG POLE
(Symbol)	0	0	0	TRANSFORMER POLE
(Symbol)	0	0	0	JOINT USE POLE
(Symbol)	0	0	0	JOINT TRNG POLE
(Symbol)	0	0	0	ISOLN POLE
(Symbol)	0	0	0	JOY POLE

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DATE	REVISION NOTES

DATE: 5/30/2014
 PROJECT: NC-MI-SWALCEL-VZW
 LOCATION: TROVERS CITY, MI
 DRAWING: 1992-6266
 PLAN: 1992-6266-4C1




SYMBOL	CT	FTC	MI	FOOTAGE TYPE	SYMBOL	CT	FTC	MI
[Symbol]	0	0	0	IMPROVED TIE	[Symbol]	0	0	0
[Symbol]	0	0	0	STRAND	[Symbol]	0	0	0
[Symbol]	0	0	0	STRAND LACING	[Symbol]	0	0	0
[Symbol]	0	0	0	STRAND JOY	[Symbol]	0	0	0
[Symbol]	0	0	0	CONDUIT DIRECTIONAL JOY	[Symbol]	0	0	0

SYMBOL	CT	FTC	MI	FOOTAGE TYPE
[Symbol]	0	0	0	IMPROVED TIE
[Symbol]	0	0	0	STRAND
[Symbol]	0	0	0	STRAND LACING
[Symbol]	0	0	0	STRAND JOY
[Symbol]	0	0	0	CONDUIT DIRECTIONAL JOY





**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director 
Date: August 6, 2014
Subject: Power Supply Planning – Next Steps

Last year the Board and staff embarked on an education process in the energy supply area due to the impending expiration of the Lansing Board of Water & Light Agreement (“LBWL”) (12-31-2015) that provides approximately 30% of TCL&P’s energy supply. While the Agreement with LBWL automatically extends from year-to-year beyond 2015, TCL&P must notify LBWL by December 31, 2014 if it intends to obtain its power supply from another source at the end of the contract term.

As TCL&P does not have the internal expertise in this very complex energy supply area, it obtained the assistance from RTD Consulting, LLC to provide education and to provide advice on the best course of action for the utility going forward. The consultant involved both the Board and staff to assure that any recommendations considered the Strategic Plan and strategic objectives of the utility. Educational areas of focus consisted of the following:

- **The Operating Environment**
- **Transmission**
- **The Need for New Generation**
- **Environmental Requirements and Local Issues**
- **Financial, Cost, Revenue Requirements and Other Related Issues**
- **The Generation Planning Process**
- **Independent vs. Participation with Others**
- **The Development of Goals and Guidelines**

Now that the education process has been completed, it is time to focus on the primary reason for the process; how should TCL&P go forward in securing its future energy supply when the LBWL Agreement expires?

At my request, RTD Consulting provided its specific recommendations customized for TCL&P. It provides a timetable of future actions by the utility for the remainder of 2014 to address the utilities power supply needs for 2016 and beyond. The Consultant and staff agreed that this timetable is achievable and the best approach. TCL&P will request proposals in a competitive bidding manner and evaluate all aspects of those proposals to achieve the ultimate contract that best serves all of the needs of TCL&P, and ensures power supply reliability and low cost to TCL&P customers.

At the meeting on Tuesday, I will be seeking direction from the Board on whether or not it agrees with the attached recommendation on the power supply planning process - next steps.



RTD CONSULTING, LLC

August 4, 2014

Timothy J. Arends
Traverse City Light & Power
Executive Director
1131 Hastings St.
Traverse City MI 49686

Subject: Steps remaining and schedule for 2014 for completion of Power Supply plan


Dear Tim,

The process we started late last year was designed to evaluate options available to develop and recommend a course of action for TCL&P when the current contract with LBWL is eligible to be terminated at the end of 2015. This started with a Board education process resulting in an identification of unique goals and issues the Board feels should be addressed in this overall process. This was accompanied by a Request for Proposal (RFP) process that would result in a determination of the most efficient and cost effective way to meet the needs of Energy Services within MISO for TCL&P. The concluding step is the resource planning process which will incorporate guidance from the Board and make recommendations on how to address the power and energy needs of TCL&P with the potential expiration of the LBWL contract. Below is a step-by-step process of what I believe to be the remaining steps for 2014 that I recommend following:

1. August 14, 2014 -Working with MMPA and other market participates, provide them with amounts of energy required for 2016-2020 to investigate opportunities available in the market.
2. August 14, 2014 -Approval of the Issues and Goals by the Board of TCL&P as they are critical in the resource planning process.
3. No later than August 15, 2014-Recommendation on results of RFP process for Energy Service will be provided. Assuming the recommendation is adopted, no action will be required by the TCL&P Board as an ESA already exists with MPPA.
4. August 30, 2014- Draft of the Resource plan will be presented to management for review.
5. September 15, 2014-Final report of the resource plan will be presented incorporating management comments.
6. After September 15, 2014 -Working with MPPA or other market participates, enter into contracts for energy post 2016. This date may vary depending of the results of market response to step 1.
7. On or before September 30, 2014 - Advise LBWL of the contract amounts as required under the PPA to be scheduled for 2015.
8. No later than December 31, 2014 – Assuming the conclusion and recommendation from the Resource plan (Step 5) supports this step, a Notice of Termination of the Power Purchase Agreement (PPA) between TCL&P and LBWL needs to be provided.
9. No Later than December 31, 2014 -A Notice of Termination of the Energy Services Agreement (ESA) between TCL&P and LBWL needs to be sent. This can be provided as early as step 3 is completed.

There are a number of action items that need to be completed but the process appears to be going smoothly. However they will need to be closely monitored over the balance of the year. If you need any clarification on the timing or steps, please let me know.

Sincerely,


Robert T. Dyer

2771 Monument Road, Jacksonville, FL 32225
(904) 607-1875
BobD@RTDConsultingllc.com | RTDConsultingLLC.com

At the conclusion of the Board Education Process on Resource Planning we asked the Board to express its "Issues and Concerns" developed through this six month program. Our goal is to insure the process addresses each of these areas. During the last meeting, on June 24, 2014, each of you offered a number of specific topics which have been distilled into the following topical areas. We now ask for your review and comments before we complete our resource planning process.

1. Energy Conservation and Green energy programs:

- a. TCL&P will meet all requirements of PA 295.
- b. The Board may set targets that are greater than the minimum requirements of the law. These targets will be addressed and evaluated against the other goals of cost, reliability and flexibility stated below.

2. Flexibility within the Resource Plan:

- a. The ability to accurately predict future market conditions and fuel prices does not exist. Therefore, the best hedge for this uncertainty is to use a strategy of balance and diversity in the areas where there exists high degrees of uncertainty.
- b. Commitments to one type of resources for an extended period via a Power Purchase Agreement (PPA) or a long term commitment required by building a single resource needs to be evaluated against shorter term more flexible options and the associated risk of more volatile prices caused by rapidly changing markets.
- c. Opportunities to participate in longer term assets should be considered as part of the hedge against uncertainty. However, this should be tempered by the concept of gradualism. That is, small increments in a variety of assets is thought to be better than attempting to meet the needs with one PPA or building one resource.

3. Maintain Competitive Cost for power and energy:

- a. The cost of power and energy needs to be reasonable, stable and sustainable.
- b. Once a plan is developed that meets all of the legal requirements of the State and Federal regulatory agencies and MISO, all other locally mandated targets should be evaluated against their impacts on power cost, reliability and volatility. If there is a local desire to set higher standards than legally required a separate financial target can be set that will allow management to use as a guide in the pursuit of that local goal.

4. Maintain a balanced risk profile:

- a. Understanding the relationship between risk and reward in power supply decision is important. In all future power supply decisions, there should be an analysis of the competing factors to attempt to maintain equilibrium in the risk/reward profile.
- b. The elements of a risk profile of a utility likely changes over time due to changing Federal, State and local rules, regulations and local issues. In addition, this risk profile may be affected by issues related to Transmission Services and the rules and regulations of MISO. In short, they are dynamic.
- c. Therefore, it is important to have a current view of the variable risk elements and this should be used to insure that the resource plan is measured against that current view.

5. Utilize membership in Michigan Public Power Agency more effectively:

- a. MPPA is a "Project Agency". In short, that means the ultimate power supply decisions remains within TCL&P.
- b. MPPA provides a number of unique services that are much more cost effective for TCL&P than attempting to develop them on their own. All of these services are needed by TCL&P to access information required by TCL&P to operate in the Power and Energy Markets within MISO.
- c. Power supply alternatives for participation in future resources are more likely to come through MPPA. Those opportunities that may not originate through MPPA, would still be a valuable source of information needed for the evaluation of the appropriateness of that opportunity.
- d. Oversight of State, Federal and MISO rule changes are closely monitored within MPPA.

Strategic Planning

Quarterly Update – August 2014



Power Supply Strategy *Business Goals*

- Create a long-term plan designed to implement programs and/or incentives that will manage load growth aimed at reducing on-peak demand by January 31, 2015. Energy efficiency programs will be implemented to achieve the maximum energy efficiency outcomes for the dollar amounts budgeted for the benefit of all ratepayers.
 - RFQ distributed to multiple outlets week of August 4, 2014
 - Selection committee to review submissions and select consultants to submit RFP September 2014
 - Staff to bring consultant recommendation to the Board for consideration on October 14, 2014
 - Final plan is anticipated to be complete by May 2015



Technology *Business Goals*

- Implement a new citywide work order management system by September 30, 2014.
 - TCL&P has decided to focus on the needs of the Light & Power Department for a work order management system
 - Staff believes the core businesses between the City and TCL&P are fundamentally different enough to conduct a review of systems independently
 - Should TCL&P and the City choose the same system, staff will combine its efforts with the City
 - Staff have viewed a demo from one vendor and plans to schedule more



Technology *Business Goals*

- Fully implement MilSoft Outage Management and Engineering Analysis Program by December 31, 2015.
 - Staff have been trained and the Outage Management and Engineering Analysis programs have been launched
 - There are still improvements to the engineering model and software enhancements that staff will continue to deploy and fine tune



Technology *Business Goals*

- Safeguard the utility from cyber threats to stay current with industry standards (on-going).
 - TCL&P has received quotes for various networking upgrades to harden the physical network
 - This includes new hardware for updated firewalls and reviews of the security code contained within
 - This is scheduled to take place as soon as possible



High Quality Workforce *Business Goals*

- Maintain a safe work environment by creating a Safety Development Plan by June 30, 2014.
 - Staff has drafted a formalized Safety Development Plan with key focus areas
 - Staff plans to present the finalized plan to the board in November 2014



High Quality Workforce *Business Goals*

- Enhance and formalize a Board Development Plan by June 30, 2014 that assists the board to make educated decisions in the best interests of the utility.
 - Staff has drafted a formalized Board Development Plan with key focus areas
 - Staff plans to present the finalized plan to the board in October 2014



Customer Satisfaction *Business Goals*

- Maintaining residential rates within the top 25th percentile of lowest rates in the state (on-going).
 - During the budget process rates were compared against the neighboring utilities
 - TCL&P continues to be ranked lower than those utilities
 - This fall, an update of all utilities within the state will be completed and provided to the board for informational purposes



Customer Satisfaction *Business Goals*

- (Customer Satisfaction/Financial Stability) Develop an improved Key Accounts Program by September 2014.
 - Staff is working with the Chamber to further develop TCL&P's Key Account offerings
 - First Key Accounts group meeting scheduled for August 18, 2014 with Airport Industrial Park customers
 - Staff is developing an economic impact survey for Key Account customers

