



Utility Committee Meeting – 04/28/2020

The City of Oconomowoc will be holding this meeting via Webex

There are two (2) ways to View and/or Participate in this meeting:

1. Join virtual meeting via computer/tablet/phone:

Instructions on joining the meeting with a PC

1. Please click on this meeting link:

<https://oconomowoc.webex.com/oconomowoc/onstage/g.php?MTID=eb29705ede585dba821a02a885b5bb083>

2. Fill out your information: First Name, Last Name, Email Address. If the meeting hasn't started, please try refreshing the page.
3. Click *Join by browser*
4. Click on the Phone Icon to connect to your computer's audio or to show a dial in number.

***Public Comment is allowed only when noticed on the Agenda.**

Public Comment: Click on the ellipses and then raise hand if you have any public comment during the allotted time.

2. Dial-in number to join the meeting via landline

Audio Conference Number: 1-408-418-9388

Access Code: 968 144 600

****NOTICE: The City Webex Licensing allows up to 200 participants for an electronic meeting. In the event that the City logs in 197 participants, we will assume that there are more people that want to participate than we are currently licensed for. In that situation, the City must cancel the meeting and reschedule after the City has obtained additional licensing to accommodate the increased public audience.**

**City of Oconomowoc
Utility Committee**

Aldermen: Kowieski, Chairman / Mulder, Secy / Zapfel

**Tuesday, April 28, 2020 - 4:00 PM
City Hall - Conference Room 3**



Notice: If a person with a disability requires that the meeting be accessible or that materials at the meeting be in an accessible format, call the City Clerk's office at least 48 hours in advance to request adequate accommodations. Tel: 569-2186

- 1. Call to Order, Roll Call and Confirmation of appropriate Meeting Notification**
- 2. Approve Minutes**
 - a. Minutes of December 17, 2019, February 18 and February 25, 2020
- 3. Committee Business**
 - a. Consider/Recommend Pole Attachment License Agreement between the City of Oconomowoc and Midwest Fiber Networks, LLC
- 4. Review Committee Reports**
 - a. UC Electric Report - March and April 2020
 - b. UC Water Report March & April 2020
 - c. UC Wastewater Report March 2020
 - d. UC Wastewater Report April 2020
- 5. Staff and Committee Comments**
- 6. Adjourn**

Diane Coenen, City Clerk
City of Oconomowoc

Members of other City governmental bodies (boards, commissions, committees, council, etc.) may attend the above noticed meeting of the Utility Committee to gather information. The only action to be taken at the above noticed meeting will be action by the Utility Committee. Utility Committee members should notify the City Clerk's Office at 569-2186 if they are unable to attend.

**City of Oconomowoc
Utility Committee Meeting Minutes – December 17, 2019**

Alderman Kowieski called the meeting to order at 6:00 PM.

Members Present: Aids. Kowieski, Zwart and Shaw

Staff Present: Mayor Nold, Kitsembel, Freber, Osborn, Schuh, Sullivan, Pickart, Buerger, Duffy, Frye, Gallo, Hoepfner, Rahn and Coenen

Others Present: Aids. Rosek, Ellis and Spiegelberg

2. **Minutes of November 19, 2019:** Motion by Shaw to approve the November 19, 2019 minutes as presented; second by Kowieski. Motion carried 3-0.
3. **Consider/recommend 2019 Utility Write-Offs:** Schuh reported write-offs are customer accounts that are deemed uncollectable due to bankruptcy or customers moving out of the area. Staff makes every effort to collect and then we turn the list over to a shared collection agency managed by Waukesha County. Using this service, we do recover some previous debt. The total 2019 write-off amount is \$14,321.74.

Motion by Shaw to recommend the 2019 Utility write-offs as presented; second by Zwart. Motion carried 3-0.

10. **Review Committee Reports:** Staff had no additional comments to report for Electric, Water and Wastewater.
11. **Staff and Committee Comments:** Shaw requested staff send out the frozen water lateral letters to the homes that historically have freezing issues sooner.
12. **Adjourn:** Motion made by Zwart to adjourn at 6:04 PM, second by Shaw. Motion carried 3-0.

Diane Coenen, City Clerk

**City of Oconomowoc
Utility Committee Meeting Minutes – February 18, 2020**

Alderman Kowieski called the meeting to order at 6:50 pm.

Members Present: Aids. Kowieski, Zwart and Shaw

Staff Present: Mayor Nold, Kitsembel, Sullivan, Buerger, Gallo, Pickart, Hoepfner, Frye, Duffy, Freber, Caine and Coenen

Others Present: Aids. Rosek, Ellis and Spiegelberg

2.a. Consider/recommend Awarding Engineering Design Services for Digester Cover Replacement/HVAC Upgrades:

Freber reported the Wastewater Dept requested proposals for engineering design for the Digester Cover Replacement/HVAC Upgrades. The City received five proposals and staff used the QBS process for ranking. Staff recommends Applied Technologies for the design engineering services for the Digester Cover Replacement/HVAC Upgrades in the not-to-exceed amount of \$112,134.00. The Committee asked about the difference in the lowest quote and Freber stated Clarke Dietz did not come to the facility for a walk through or follow the detail of the RFP.

Motion by Shaw to recommend awarding the engineering design services for Digester Cover Replacement/HVAC Upgrades to Applied Technologies in the not-to-exceed amount of \$112,134; second by Zwart. Motion carried 3-0.

2.a. Consider/recommend Approving the Valley Road Water Main Extension Special Assessment:

Caine reported Council previously adopted the preliminary resolution on February 19, 2019 and the project is now complete. The last step in the process is the adoption of the final resolution to special assess for the Valley Road Water Main Extension which closed two large radial water main feeds in the southwest area of the system, will make water service available to previously unserved areas, and allows the overall water system to function with greater efficiency. The final cost per REC is \$655.24, which is less than the preliminary estimate of \$672.55 per REC. Caine added that all property owners affected by this special assessment signed a waiver for the Public Hearing.

Motion by Shaw to recommend approving the Valley Road Water Main Extension Special Assessment; second by Zwart. Motion carried 3-0.

Motion by Shaw to adjourn; second by Zwart. Motion carried 3-0. The meeting adjourned at 6:58 PM.

Diane Coenen, City Clerk

**City of Oconomowoc
Utility Committee Meeting Minutes – February 25, 2020**

Alderman Kowieski called the meeting to order at 4:00 pm.

Members Present: Aids. Shaw, Kowieski and Zwart

Staff Present: Kevin Freber, Scott Osborn, John Schuh, Laurie Sullivan, Joe Pickart, Ellen Schmidt, Sarah Kitsembel and Tina Wallace

2. Minutes of January 28, 2020: Motion by Shaw to approve the January 28, 2020 minutes as presented; second by Kowieski. Motion carried 3-0.

3.a. Consider/recommend Biosolids Contract and Budget Amendment: Freber stated the request for proposals was advertised in the local newspaper on January 16 and January 23, 2020. A total of 3 firms inquired about the project and obtained one firm that provided a response. Freber stated he contacted two of the haulers and asked them why they didn't bid on the project. One stated they took over contracts from a different hauler last year and the other couldn't afford to purchase more equipment. Freber anticipates that they will be removing 1.8 to 2 million gallons of biosolids next year. He stated we were roughly 250,000 gallons short from last year due to wet soil. He is asking for .05/gallon for the biosolids contract for the next 3-years and a budget amendment of \$30,500 to cover the shortfall. Members asked how we compare to other communities. Freber stated he will contact other communities to get comparables.

Motion by Shaw to recommend acceptance of the proposal from Bader State Waste LLC for the Biosolids Hauling contract for 3-years at cost of \$.05/gallon; second by Zwart. Motion carried 3-0.

Shaw asked how much is in the Wastewater Reserve account. Sullivan responded she will look the number up and add the amount to the memo for Council.

Motion by Shaw to recommend a budget amendment for 2020 in account number 601-576-3618-210 Biosolids Management-Outside/Prof Services (Non-IT) of \$30,500 to be taken from Wastewater Reserve Account; second by Zwart. Motion carried 3-0.

4. Review Committee Reports: Utility Billing – Electric – Pickart referred to his report included in the packet. He noted the Silver Lake Street overheads are all down and the underground is energized. Staff has been assisting the Water and DPW Departments with water main breaks and snow removal. Also, Pickart stated the Water Department will be fully staffed in the next few weeks. **Water –** Osborn referred to his report included in the packet. He noted that tomorrow staff is meeting with the design engineer, Strand and kicking off the Well #8 pumping station project. There have been 3 water main breaks due to the dip in temperatures and then backup. **Wastewater –** Freber referred to his report included in the packet. He noted a wastewater technician was hired and he started on February 24, 2020. He stated RFQ's were sent out to do the load bank testing and RICE NESHAP testing. The low bidder was Grace Consulting, and this did not go to Council because there was no engineering involved and it was within budget. He stated this testing is required every 3 years. Members suggested having the dollar amount for Council.

5. Staff and Committee Comments: None.

6. Adjourn: Motion made by Shaw to adjourn at 4:14 pm; second by Zwart. Motion carried 3-0.

Tina Wallace, Deputy City Clerk



MEMORANDUM

ELECTRIC UTILITY

Date: April 24, 2020

To: Utility Committee

From: Joe Pickart, Electric and Water Utility Manager

Re: Consider/Recommend Acceptance of Pole Attachment License Agreement between City of Oconomowoc and Midwest Fiber Networks, LLC

RELATES TO THE STRATEGIC PLAN

N/A

BACKGROUND

The City of Oconomowoc and Midwest Fiber Networks, LLC have negotiated a Pole Attachment License Agreement to allow Midwest Fiber Networks to install new, or maintain existing cable, wires and associated equipment on the Electric Utility's poles to provide Communications Services to the public. The initial term of the agreement shall become effective upon signed Agreement and continue for ten (10) years (Initial Term). An additional Extension Term of the agreement is ten (10) years commencing on the expiration of the Initial Term, provided the Licensee is not in default under this Agreement. These terms and conditions are standard across the Pole Attachment agreements with our Communication providers.

The agreement provided has two (2) edits marked in red that have been corrected and re-submitted to Midwest Fiber Networks for signature. See page 1 of the agreement and page 1 of Appendix A (fee schedule). The edits are to correct the Communications entity name and the effective dates.

ADDITIONAL ANALYSIS

N/A

FINANCIAL IMPACT

Compensation to the City of Oconomowoc shall be:

Annual Pole Attachment Fee (charged on a per-pole basis) effective upon signed acceptance of both parties:

- Single: \$14.02
- Double: \$7.01
- Triple: \$4.67

Rates shall be recalculated every year. Non-Recurring fees such as permit applications, surveys, inspections, etc shall also apply with a 3% rate increase each year. The rates, fees and increases are standard across the Pole Attachment agreements with our Communication providers.

RECOMMENDATION

Staff recommends approval of the Pole Attachment License Agreement with corrected edits as marked.

SUGGESTED MOTION

Consider Recommend to Common Council acceptance of the Pole Attachment License Agreement between City of Oconomowoc and Midwest Fiber Networks, LLC with corrected edits as marked.

EXECUTION VERSION

**POLE ATTACHMENT LICENSE AGREEMENT
BETWEEN CITY OF OCONOMOWOC, WISCONSIN
AND
MIDWEST FIBER NETWORKS, LLC**

INDEX

	<u>Page</u>
ARTICLE 1 DEFINITIONS	1
ARTICLE 2 SCOPE OF AGREEMENT	3
ARTICLE 3 FEES AND CHARGES.....	8
ARTICLE 4 SPECIFICATIONS	10
ARTICLE 5 PRIVATE AND REGULATORY COMPLIANCE.....	12
ARTICLE 6 PERMITTING AND NOTIFICATION PROCEDURES	13
ARTICLE 7 MAKE-READY WORK/INSTALLATION	15
ARTICLE 8 TRANSFERS.....	16
ARTICLE 9 POLE MODIFICATIONS AND/OR REPLACEMENTS	16
ARTICLE 10 REMOVAL OF POLES/OVERHEAD TO UNDERGROUND CONVERSIONS	18
ARTICLE 11 TERMINATION OF PERMIT.....	19
ARTICLE 12 INSPECTIONS OF LICENSEE’S FACILITIES/INVENTORIES	20
ARTICLE 13 UNAUTHORIZED OCCUPANCY OR ACCESS	21
ARTICLE 14 LIABILITY AND DAMAGES	21
ARTICLE 15 DUTIES, RESPONSIBILITIES, AND EXCULPATION	24
ARTICLE 16 INSURANCE	25
ARTICLE 17 AUTHORIZATION NOT EXCLUSIVE	27
ARTICLE 18 ASSIGNMENT	27
ARTICLE 19 FAILURE TO ENFORCE.....	28
ARTICLE 20 DEFAULT	28
ARTICLE 21 TERM OF AGREEMENT	29
ARTICLE 22 MISCELLANEOUS	30

APPENDICES

APPENDIX A	POLE ATTACHMENT FEES AND CHARGES
APPENDIX B	SPECIFICATIONS FOR ATTACHMENTS TO UTILITY’S POLES (including POLE TOP DRAWINGS)
APPENDIX C	POLE ATTACHMENT PERMIT APPLICATION PROCESS
APPENDIX D	PERMIT APPLICATION FOR ATTACHMENT OR REMOVAL
APPENDIX D-2	OVERLASH APPLICATION FORM

**POLE ATTACHMENT LICENSE AGREEMENT
BETWEEN CITY OF OCONOMOWOC, WISCONSIN
AND
SPECTRUM MID-AMERICA, LLC**

*To Be Corrected
to Midwest Fiber Networks*

This Pole Attachment License Agreement (the "**Agreement**") dated this 1st day of August, 2019 (**Effective Date**), is made by and between the City of Oconomowoc, Wisconsin, a Wisconsin municipal corporation and public utility ("**Utility**" or "**Licensor**"), and Midwest Fiber Networks, LLC ("**Licensee**"), each a "**Party**" and collectively the "**Parties.**"

> update

RECITALS

- A. Licensee proposes to install new, or maintain existing, cables, wires and associated equipment on Utility's Poles to provide Communications Services to the public.
- 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 non-discriminatory basis, to issue a Permit where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes.
- C. The Parties intend that this Agreement shall supersede any and all pole attachment agreements (written or oral) between the Parties, and any such preexisting agreement are hereby terminated.

AGREEMENT

ARTICLE 1: DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

1.1 **Affiliate:** when used in relation to Licensee, means , any entity that is Controlled by Charter Parent, or any entity in which Charter Parent holds the power to vote, directly or indirectly, 25% or more of the voting securities. "**Control**" means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. "**Charter Parent**" means the ultimate parent entity of Licensee, which is the parent entity that holds the power to vote, directly or indirectly, 50% or more of the voting securities of Licensee, but in which no person or entity holds the power to vote 50% or more of such parent entity's voting securities.

- 1.2 Applicable Standards:** means the engineering and safety standards contained in **Appendix B** and all applicable engineering and safety standards governing the installation, maintenance and operation of utility facilities and the performance of all work in or around electric utility facilities, and includes the versions of the following codes in effect at the time of attachment: the National Electric Safety Code (“**NESC**”), the National Electrical Code (“**NEC**”), the Wisconsin State Electric Code (“**WSEC**”), the regulations of the Occupational Safety and Health Administration, the regulations of the Department of Workforce Development (including the rules regarding safety equipment), and the safety and engineering requirements of any state or federal agency with jurisdiction over utility facilities, each of which is incorporated by reference into this Agreement. Subsequent versions of the Applicable Standards shall apply on a prospective basis to Attachments made thereafter, unless such subsequent versions require retroactive application to existing Attachments.
- 1.3 Attaching Entity:** means any public or private entity that attaches to a Pole pursuant to a license agreement with Utility to provide Communications Service to the public.
- 1.4 Attachment:** means Licensee’s Communications Facilities that are placed directly on Utility’s Poles or Overlashed onto an existing Attachment but does not include a Riser or a service drop that is attached to a single Pole on which Licensee has an existing Attachment.
- 1.5 Climbing Space:** means that portion of a Pole that is free from encumbrances to enable Utility employees and contractors to safely climb, access, and work on Utility Facilities and equipment.
- 1.6 Communications Facilities:** means a wire, cable, or other facility and appurtenant equipment used to provide Communications Service.
- 1.7 Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.
- 1.8 Make-Ready Work:** means all work, as reasonably determined by Utility, required solely to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work may include, 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 strengthening and construction. Notwithstanding the foregoing, Licensee shall not be responsible for the cost of Make-Ready Work required to correct the violations caused by third parties, including other Attaching Entities and Utility.

- 1.9 **Occupancy:** means the use or specific reservation of space for Attachments on a Pole.
- 1.10 **Overlash:** means to place an additional wire or cable onto an existing attached Communications Facility.
- 1.11 **Permit:** means written or electronic authorization by Utility for Licensee to make or maintain Attachments to specific Poles pursuant to the requirements of this Agreement.
- 1.12 **Permit Application:** means the application Licensee submits to Utility in order to obtain authorization to place Communications Facilities on Utility Facilities. See **Appendix D** for application form.
- 1.13 **Pole:** means a pole owned by Utility used for the distribution of electricity or provision of Communications Service that is capable of supporting Attachments for Communications Services. “Pole” may also include a pole owned by Utility used for the transmission of electricity, provided that Utility and Licensee agree that such pole can safely accommodate Attachments consistent with all Applicable Standards.
- 1.14 **Post-Construction Inspection:** means all work or operations performed to measure and/or observe Licensee’s Attachments shortly after installation to determine that the Attachments have been constructed in accordance with all Applicable Standards and this Agreement.
- 1.15 **Pre-Construction Survey:** means all work or operations required by Applicable Standards 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, loading calculations, and administrative processing by Utility.
- 1.16 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.17 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by Utility that will readily identify the type of Attachment and its owner.
- 1.18 **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 Licensee's submitting an application for a Permit ("Permit Application") and receiving an approved Permit as required by 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 and of the Permits issued pursuant to this Agreement.
- 2.3 Permit Issuance Conditions. Utility will issue a Permit to Licensee only when Utility determines, in its sole judgment, reasonably exercised, that (i) it has sufficient capacity to accommodate the requested Attachments, (ii) Licensee complies with all applicable requirements set forth in this Agreement, and (iii) the affected Poles can safely accommodate the proposed Attachments consistent with all Applicable Standards.
- 2.4 Reserve Capacity. Access to space on Utility's Poles will be made available to Licensee with the understanding that such access is to Utility's reserve capacity for future electric service use. On giving Licensee at least ninety (90) calendar days' prior notice, Utility may reclaim such reserve capacity any time during the period following the installation of Licensee's Attachment if required for Utility's future electric service use, including the attachment of communications lines solely for internal Utility operational requirements. Utility will inform Licensee of any plans Utility may have to use such reserve capacity at the time Licensee submits its Permit Application, but this requirement shall not be a prerequisite to Utility's exercise of its right to reclaim capacity. On giving Licensee notice that it will reclaim reserve capacity, Utility shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any MakeReady Work needed to expand the capacity of the affected Pole(s) so that Licensee can maintain its Attachment(s) 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 and shall be shared with any other licensee who also has Attachments on the affected Pole(s) that is required to share in such costs pursuant to its pole attachment agreement with Utility that is already in effect as of the Effective Date. Utility shall cover the Make-Ready costs of any other licensee not required to share in such costs pursuant to its agreement with Utility.
- 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 easements or other ownership or property rights 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 the Utility Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a mere Licensee.

2.6 Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to a Permit within one hundred twenty (120) days of the effective date of such right and any extension thereof, Utility may use the space scheduled for Licensee's Attachment. Utility shall grant an extension where Licensee demonstrates that events beyond its control prevented Licensee from exercising any such access right. In such instances, Utility shall endeavor to make other space available to Licensee, upon written request, as soon as reasonably possible.

2.7 Licensee's Right to Attach.

2.7.1 Except as otherwise expressly permitted by this Agreement, nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole or to compel Utility to grant Licensee the right to attach to any specific Pole.

2.7.2 Nothing in this Agreement shall be construed to grant any Affiliate of Licensee the right to attach to any Poles without entering into a license agreement with Utility and receiving a permit pursuant to such agreement.

2.8 Necessity of Authorizations. Licensee is obligated to obtain all necessary certifications, permits, and franchises from federal, state, and local authorities prior to making any Attachments.

2.9 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 it reasonably believes will best enable it to fulfill its own service requirements.

2.10 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 by Licensee when such Pole is not needed for Utility's own service requirements.

2.11 Other Agreements. Except as provided herein, nothing in this Agreement shall restrict or prohibit Utility from fulfilling any agreement or arrangement regarding Poles into which Utility has previously entered, or may enter in the future, with others not party to this Agreement, so long as Licensee is provided access on a reasonable and nondiscriminatory basis.

2.12 Permitted Uses. This Agreement is limited to the uses specifically stated in this Agreement, and no other use by Licensee 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.

2.13 Overlashing. The following provisions will apply to Overlashing:

- (a) Permits for Overlashing shall be required and handled on an expedited basis as set forth in this Section 2.13. Absent such authorization, Overlashing constitutes an unauthorized Attachment.
- (b) Except as provided in Section 2.13(f), Licensee shall file an Overlash Permit Application Form (see Appendix D-2), which shall include a certification consistent with Section 6.4 ("Certification") that (1) the Overlash will not impair the structural integrity of the Poles, that the Overlash can be made in compliance with all Applicable Standards, and that no Make-Ready Work will be necessary to accommodate the proposed Overlash or (2) that Make-Ready Work is necessary.
- (c) Within five (5) business days of receipt of Licensee's Permit Application, Utility shall, in accordance with the requirements set forth below, approve the Permit Application, deny the Permit Application, or request further consultation with Licensee. The Permit Application shall be deemed approved if Utility fails to act during this five (5) business day period.
 - (1) **Approval.** If Utility agrees with Licensee's Certification, Utility shall approve the Application in writing, and Licensee may proceed with Overlashing upon receipt of such approval. If the Permit Application involves a project in which the Overlashed cable replaces an existing cable with one of no greater size nor weight than the one removed by Licensee, the Permit Application shall be deemed approved upon receipt, and Licensee may proceed with the Overlash within twenty-four (24) hours of submitting the Permit Application.
 - (2) **Denial.** Utility may deny the Permit Application on a non-discriminatory basis, where there is insufficient capacity, if the Permit Application is incomplete, or if the Permit Application lacks a Certification in accordance with Section 6.4.
 - (3) **Consultation Request.** Utility shall request consultation with Licensee regarding its Permit Application if Licensee's Certification states that Make-Ready Work is necessary to accommodate the proposed Overlash or

if Utility reasonably disagrees with Licensee's Certification as to the necessity of Make-Ready Work.

- (A) Within one (1) business day after receipt of Utility's Consultation Request, Licensee shall provide to Utility its documentation and analysis supporting its Certification.
- (B) Within ten (10) business days of receipt of Licensee's Permit Application and after the Consultation Request is made:
- (i) Utility shall approve the Permit Application if it determines that no Make-Ready Work is necessary to accommodate Licensee's proposed Overlash, and Licensee may proceed with the Overlash work; or
- (ii) If Utility determines that Make-Ready Work is necessary to accommodate Licensee's proposed Overlash, Utility shall notify Licensee, and the Parties shall meet to discuss and develop a mutually acceptable plan for completion of the Make-Ready Work. The plan shall indicate whether Utility or a contractor approved by Utility shall complete the Make-Ready Work and shall specify an agreed-upon construction schedule, which includes dates for:
- Delivery of cost estimate to Company;
 - Payment of estimate by Company;
 - Completion of Make-Ready Work;
 - Approval of Permit Application (so that Overlashing work can proceed)
- (iii) If Licensee did not submit a Pre-Construction Survey with its overlash proposal, and Utility has a reasonable good faith belief that a Pre-Construction Survey is necessary to evaluate the proposed Overlash, Utility may, within this ten (10) business day period, either require Licensee to perform a Pre-Construction Survey or Utility may perform one on its own and at Licensee's reasonable cost.
- (d) If Overlashing is required to accommodate facilities of a third party, such third party must enter into a license agreement with Utility and obtain a permit pursuant to such Agreement. No such permits to third parties may be granted by Utility allowing Overlashing of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Section

2.13(d) shall not increase the Attachment Fees or other charges paid by Licensee pursuant to Appendix A. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlapping third party to defray fees and charges paid by Licensee.

- (e) At any time after completion of the proposed Overlapping work by Licensee, Utility shall have the right to inspect Licensee's Overlashed Attachment in accordance with Article 12.
- (f) A Permit Application is not required when the proposed Overlapping work is necessary as part of an Emergency Activity. The term "Emergency Activity" is defined as an activity that is not reasonably foreseeable and that is necessary to prevent injury of any person, restore an essential service, or to protect property from imminent and substantial harm. Licensee shall contact Utility immediately upon learning of conditions requiring emergency Overlapping work. Utility shall be available by phone on a 24-7 basis.
- (g) The Make-Ready Work procedures set forth in Article 7 shall apply to Overlapping work, subject to the requirements set forth in this Section 2.13.
- (h) The Parties agree that written notifications to be made under this Section 2.13 (including denials, approvals, and consultation requests) shall be made via e-mail in order to facilitate expedited processing of Permit Applications for Overlashed Attachments (which may be followed by hard copies sent via mail or overnight delivery). Such emailed notices may be sent to the following personnel for each Party:

If to Utility, to: Joe Pickart
Utility Manager
City of Oconomowoc
jpickart@Oconomowoc-wi.gov

If to Licensee, to: Engineering Manager
Midwest Fiber Networks
6070 N Flint Road
Glendale, WI 53209

ARTICLE 3: FEES AND CHARGES

- 3.1 Fee Schedule. 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 Annual Attachment. Licensee shall pay to Utility an annual “Attachment Fee” on a per Pole basis at the rate specified in Appendix A. The “Attachment Fee Rate” shall be recalculated every year based on Utility’s most recent annual report filed with the Public Service Commission of Wisconsin, using the methodology shown on Exhibit 1 to Appendix A.
- 3.3 Billing. Utility shall invoice Licensee for the Attachment Fee on an annual basis. Each annual rental period shall commence on January 1 of each year. The invoice shall set forth the total number of Utility’s Poles for which Licensee was issued and/or holds a Permit for Attachment during such annual rental period, including any previously authorized and valid Permits.
- 3.4 Payment. Licensee shall pay invoices for any fee or charge as specified in Appendix A within forty-five (45) days after the receipt of the invoice (“Due Date”). Licensee may dispute fees or charges invoiced to Licensee in accordance with the dispute resolution provision in Section 22.8 below as well as pay such disputed fees or charges under protest.
- 3.5 Late Charge. If Licensee fails to pay any undisputed amount owed under this Agreement within forty-five (45) days after the Due Date, Licensee shall pay interest to Utility, at the rate of 1.5% per month, on the amount past due.
- 3.6 Change in Fees/Charges. Any changes in fees or charges shall be as set forth in Appendix A.
- 3.7 Payment of Make-Ready Work. Licensee will be responsible for payment to Utility of all Make-Ready Work required to accommodate Licensee’s Attachments (including Overlashes). Licensee shall not be responsible for any Make-Ready Work costs related to the correction of preexisting safety violations caused by others, including Utility.
- 3.8 Advance Payment.
- 3.8.1 At the discretion of Utility, Licensee shall pay in advance all reasonable costs, including but not limited to, administrative, construction, inspection and Make Ready Work expenses, in connection with the initial installation or rearrangement of Licensee’s Attachments pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8.2 Wherever Utility at its discretion requires advance payment of estimated expenses prior to the undertaking of an activity under this Agreement and the actual cost of such activity exceeds the estimated cost, Licensee agrees to pay Utility for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, Utility agrees to refund to Licensee the difference in cost.

- 3.9 Determination of Charges. Unless otherwise provided in this Agreement, wherever this Agreement requires Licensee to pay for work done or contracted for by Utility, the charge for such work shall include all reasonable material, labor, engineering, and administrative costs and applicable overheads that are not otherwise recovered in the Attachment Fee. Utility shall bill its services based upon actual reasonable costs, and such costs will be determined in accordance with Utility's cost accounting systems used for recording capital and expense activities. Utility shall provide Licensee with documentation of charges and costs to be paid by Licensee.
- 3.10 Work Performed by Utility. Wherever this Agreement requires Utility to perform any work, Utility may, at its sole discretion, utilize its own employees or contractors, or any combination of the two, to perform such work.
- 3.11 Default for Nonpayment. Nonpayment of any undisputed amount due under this Agreement beyond ninety (90) days from the due date shall constitute a default of this Agreement.
- 3.12 Failure to Timely Transfer or Remove Facilities Charge. Before levying the Failure to Timely Transfer or Remove Facilities Charge as set on in Appendix A, Utility shall give Licensee written notice (email notice is sufficient) that Licensee is subject to such charge for failing to transfer or remove its Communications Facilities within the time period set out in the applicable provision ("**Requisite Time Period**"). If the notice is given within the sixty (60) calendar days following the end of the Requisite Time Period, the charge shall be levied beginning on the day after the Requisite Time Period ends and will end on the day Licensee actually removes or transfers it facilities. Otherwise, the charge shall be levied beginning on the day the notice is given.

ARTICLE 4: SPECIFICATIONS

- 4.1 Installation/Maintenance of Communications Facilities. Licensee shall be responsible for the installation, maintenance, and repair of its Attachments, which shall be installed and maintained in accordance with all Applicable Standards. Utility reserves the right to have an employee on-site at the time Attachments are made, at no additional cost to Licensee. Licensee shall be required to comply with the version of the Applicable Standards in effect at the time of attachment, unless subsequent versions require otherwise.
- 4.2 Tagging. Licensee shall Tag all of its Communications Facilities as specified in Appendix B upon installation of such facilities. With regard to Attachments installed prior to the Effective Date, Licensee shall Tag such "**Pre-Existing Attachments**" within one (1) year after the Effective Date. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

- 4.3 Interference. Licensee shall not allow its Communications Facilities to impair the ability of Utility to use Utility's Poles, nor shall Licensee allow its Communications Facilities to interfere with the use or operation of any Utility Facilities or the Attachments of any authorized user of Utility's Poles.
- 4.4 Protective Equipment. Licensee, its employees, and contractors shall utilize adequate protective equipment to ensure the safety of people and facilities. Except as provided in Article 14, Utility shall not be liable for any actual damage to Licensee's Communication Facilities or Licensee's customers' facilities, nor for consequential damages as a result of damage to Licensee's Communications Facilities or Licensee's customers' facilities.
- 4.5 Violation of Specifications. If Licensee's Communications Facilities, or any part thereof, are installed, used, or maintained in violation of this Agreement, and Licensee has not corrected the violation within thirty (30) calendar days from receipt of written notice of the violation from Utility, Utility may at its own option correct the violation. In the event of a violation of a nature not reasonably corrected in thirty (30) days, Licensee shall have a reasonable amount of additional time as mutually agreed upon by both Parties to correct such violation. Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Utility reasonably believes, however, that the violation poses an immediate threat to the safety of any person, interferes with the performance of Utility's electric service obligations, or poses 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 thereafter, Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for paying Utility for all reasonable costs Utility incurs taking action under this section.
- 4.6 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 Section 4.6. Except as otherwise provided, 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 Poles, in which case Licensee shall remove such Nonfunctional Attachments 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).

4.7 Restoration of Utility Electric Service. Utility's electric service restoration requirements shall take precedence over any and all work operations of Licensee on Utility's Poles.

ARTICLE 5: PRIVATE AND REGULATORY COMPLIANCE

5.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of Utility's Poles. Utility retains the right to require reasonable 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 all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse Utility for all loss and expense, including reasonable attorneys' 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 Communications Facilities on Utility's Poles.

5.2 Compliance with Laws. Licensee's Communications Facilities must comply with all applicable local, state, and federal laws.

5.3 Utility's Rights. Utility may deny Licensee's request for a Permit to attach to a Pole if granting the request would result in a forfeiture of Utility's right to maintain its Pole in its current location. Utility may also revoke a Permit if the presence of Licensee's Communications Facilities on a Pole would cause such forfeiture. In that event, Licensee shall promptly remove its Communications Facilities upon receipt of written notice from Utility. Such notice shall provide an explanation as to Utility's potential forfeiture of its right to maintain the Pole at issue. If Licensee fails to remove its Facilities within thirty (30) calendar days after Licensee's receipt of the written notice or such other longer time period as the Parties may agree, Utility shall have the right to remove such Communications Facilities, using its own personnel or a contractor, at Licensee's sole expense. If Utility does not remove the Communications Facilities, the affected Attachments shall be subject to the Failure to Timely Transfer or Remove Facilities Charge set out in Appendix A until the affected Attachments are actually removed.

5.4 Effect of Consent to Construction/Maintenance. Utility's consent to the construction or maintenance of any of Licensee's Attachments shall not be deemed to be an acknowledgment that Licensee has the necessary authority to construct or maintain any such Attachments. It is Licensee's responsibility to obtain all necessary approvals from all appropriate parties or agencies.

ARTICLE 6: PERMITTING AND NOTIFICATION PROCEDURES

6.1 Permit Required. Except as allowed by the terms of this Agreement, Licensee shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements set forth in this Agreement. Unless otherwise notified, Licensee's Pre-Existing Attachments shall be grandfathered with respect to permitting, but shall be subject to Attachment Fees in future billing periods. Licensee shall provide Utility with a list, in a form approved by Utility, of all such Pre-Existing Attachments within six (6) months of the Effective Date. All such Pre-Existing Attachments shall comply with the terms of this Agreement within eighteen (18) months of the Effective Date.

6.2 Service Drops. Licensee shall notify Utility annually of attachments of a service drop where an existing permitted Attachment exists. In the event that a service drop constitutes the initial Attachment to a given Pole, Licensee will be required to follow the permitting process referenced in Section 6.1. In this case, Licensee will be allowed thirty (30) days after the Attachment is made to complete the permitting process.

6.3 Permits for Modifications or Overlashing. Permits are required for any modifications to permitted attachments allowed under this Agreement that result in a material increase in the loading of the affected Pole or result in an increased use of vertical space on the Pole beyond twelve (12) inches, including Overlashing, as set out in Section 2.12 or Section 2.13 as applicable for Overlashing. Licensee, Licensee's Affiliate, or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such modifications or Overlashing.

6.4 Pre-Construction Survey. As part of the Permit Application process, Licensee must conduct and, where required by Utility, submit a Pre-Construction Survey. If desired by Licensee and at Utility's option, Utility may perform this Pre-Construction Survey, using its own personnel or a contractor, at Licensee's expense (except to the extent any such expenses are recovered by the Annual Attachment Fee). Licensee must also certify that Licensee's Communications Facilities can be installed on the identified Poles in compliance with all Applicable Standards. Such certification must be made by one of the following:

6.4.1 A professional engineer with experience with electric utility facilities;

6.4.2 The head of Licensee's engineering department; or

6.4.3 An authorized representative of Licensee who is experienced working with electric utility facilities and performing line loading calculations and who has been pre-approved in writing by Licensor. Licensor shall not unreasonably withhold or delay such pre-approval. Licensor shall indicate its pre-approval on a separate "List of Pre-Approved Contractors and Authorized Representatives," which may be updated from time to time.

Utility shall waive the requirements of this Section 6.4 with respect to those service drops that do not come within the definition of Attachment.

6.5 Utility Review of Permit Application. Utility shall use reasonable efforts to act on a Permit request for an Attachment within thirty (30) days of the receipt of a completed Permit Application. Upon receipt of a complete and properly executed Permit Application (see Appendix C, Pole Attachment Permit Application Process), Utility will review the Permit Application as promptly as possible, and discuss any issues with Licensee, including unusual engineering or Make-Ready Work requirements associated with the Permit Application. Utility's acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

6.6 Expedited Process. Utility shall cooperate with Licensee to expedite the permitting process where the proposed Attachment is necessary to restore service or prevent an imminent service outage on Licensee's system.

6.7 Performance of Make-Ready Work. If Make-Ready Work is required to accommodate Licensee's Attachments, such work shall be performed in accordance with Article 7.

6.8 Permit as Authorization to Attach. After receipt of any required payments, including payment for any necessary Make-Ready Work, Utility will sign and return the Permit Application, which shall serve as authorization for Licensee to place its Attachments.

6.9 Risers. No Permit is required for Risers. All Risers shall be installed in compliance with the specifications set out in Appendix B.

6.10 Attachment Records. On an annual basis, Licensee shall furnish Utility with an up-to-date map depicting the locations of its Attachments in an electronic format specified by utility. If a map is not available, Licensee will provide a list in an electronic format specified by Utility.

ARTICLE 7: MAKE-READY WORK/INSTALLATION

7.1 Estimate for Make-Ready Work. In the event Utility determines after review of the Permit Application that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment as set forth in Section 2.13, Utility will advise Licensee of any estimated Make-Ready Work necessary to accommodate the Attachment.

7.2 Payment of Make-Ready Work. Upon completion of the Make-Ready Work, Licensee shall pay Utility's actual reasonable cost of such Make-Ready Work. Utility, at its discretion, may require payment in advance based upon the estimated cost of Make-Ready Work. Utility shall provide documentation of Make-Ready Work costs to Licensee.

7.3 Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by Utility or a contractor pre-authorized by Utility to perform such work. If Utility cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within sixty (60) days of Licensee's request for Attachment, Licensee may, with Utility's written consent not to be unreasonably withheld or delayed, employ a contractor preapproved by Utility to perform such work. Licensor shall not unreasonably withhold or delay such pre-approval. Licensor shall indicate its pre-approval on a separate "List of Pre-Approved Contractors and Authorized Representatives," which may be updated from time to time.

7.4 Scheduling of Make-Ready Work. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of Utility's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein is intended, however, to require performance of Licensee's work before other scheduled work of Utility.

7.5 Licensee's Installation/Removal/Maintenance Work.

7.5.1 All of Licensee's installation, removal, and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely or materially affect the structural integrity of Utility's Poles or Utility Facilities or any other facilities or equipment attached thereto.

7.5.2 All of Licensee's installation, removal, and maintenance work performed on Utility's Poles or in the vicinity of other Utility Facilities, by either Licensee's own employees or contractors, shall be in compliance with all Applicable Standards. Licensee shall assure that any person installing, maintaining, or removing

Licensee's Communications Facilities be duly qualified and familiar with all Applicable Standards, the provisions of Article 15 (duties, responsibilities, and exculpation) and Article 16 (insurance requirements), and the specifications contained in **Appendix B**.

ARTICLE 8: TRANSFERS

8.1 **Transfers of Licensee's Communications Facilities.** Utility will notify Licensee when it is necessary to transfer its Communications Facilities. In such instances, Licensee shall transfer its Communications Facilities at its own expense within thirty (30) days after receiving notice from Utility. If Licensee fails to transfer its Communications Facilities within this time period or any extension thereof granted by Utility, Utility shall have the right to transfer Licensee's Communications Facilities, using its own personnel or contractors, at Licensee's expense. Utility shall not be liable for damage to Licensee's Communications Facilities except to the extent provided in Section 14.1. If Licensee fails to transfer its Communications Facilities within the required time period, Utility may perform the required transfer of Licensee's Communications Facilities, using its own personnel or contractor, and charge Licensee 125% of the actual cost incurred. If Licensee fails to timely perform the transfer and Utility is unable, in its sole judgment, to perform the work, Licensee shall be subject to the Failure to Timely Transfer Facilities Charge set out in **Appendix A** until the transfer actually occurs.

8.2 **Emergency Transfers.** When Utility reasonably determines that a transfer of Licensee's Communications Facilities is immediately necessary, Licensee agrees to allow such transfer. In such instances, Utility will, at its option, either perform the transfer using its personnel, and/or contractors. Utility shall not be liable for damage to Licensee's Communications Facilities except to the extent provided in Section 14.1. Utility shall provide written notice of any such actions taken within ten (10) days of the occurrence.

ARTICLE 9: POLE MODIFICATIONS AND/OR REPLACEMENTS

9.1 **Licensee's Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make an Attachment is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, Utility will notify Licensee of the changes necessary to provide an adequate Pole, including but not limited to replacement or extension of the Pole and rearrangement or transfer of Utility's Facilities. As provided in Section 7.1, Utility shall provide Licensee with an estimate of the costs for the replacement or modification of the Pole, including the costs associated with transferring Utility's Facilities (i.e., Make-Ready Work costs). If Licensee elects to go forward with the necessary changes, Licensee shall pay to Utility the actual cost of

making the required changes in accordance with Article 7. Utility may in its discretion require advance payment.

9.2 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Communications Facilities or the modification or 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 or Licensee or other Attaching Entity on the following basis:

9.2.1 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 or replacement of the Pole, and Licensee shall be responsible for the costs associated with the rearrangement or transfer of its own Communications Facilities. Prior to making any such modification or replacement, Utility shall provide Licensee prior written notice in order to allow Licensee a reasonable opportunity to elect to add to its existing Communications Facilities. If Licensee elects to add to its Communications Facilities within six (6) months after receiving such notice, Licensee shall bear a pro rata share of the costs incurred by Utility in making the space on the Poles accessible to Licensee. The notification requirement of this Section 9.2.1 shall not apply to routine maintenance or emergency situations.

9.2.2 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Attachments. 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 Attachments pursuant to this provision.

9.2.3 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 Pole replacement and such Attaching Entity shall be responsible for the costs associated with transferring or rearranging Licensee's Communications Facilities, except as otherwise provided in this Agreement. Upon written notice from Utility or the Attaching Entity, provided such Attaching Entity agrees in writing to pay Licensee's costs, Licensee shall promptly perform any transfer or rearrangement of Licensee's Attachments necessary to accommodate the other Attaching Entity's Attachments to the Pole. If Licensee fails to perform such transfer or rearrangement within forty (40) days from the date of written notice from Utility,

or written notice and agreement to pay from the other Attaching Entity, Utility shall have the right, but not the obligation, to perform the transfer or rearrangement. In the event Utility performs the transfer or rearrangement, Utility may charge Licensee, and Licensee shall be obligated to pay Utility, for the cost of performing such work; however, Licensee will then be allowed to seek reimbursement from the Attaching Entity for the cost of the performed work. Except as otherwise provided in this Agreement, Licensee shall not be required to make any transfer or rearrangement at the request of another Attaching Entity unless and until the other Attaching Entity has made arrangements in writing with Licensee to pay for the cost of the transfer or rearrangement.

9.2.4 If a Pole must be modified or replaced for other 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; provided however, that Licensee shall be responsible for the costs of rearranging or transferring Licensee's Communications Facilities.

9.3 Treatment of Multiple Requests for Same Pole. If Utility receives Permit Applications for the same Pole from two (2) or more prospective licensees within a sixty (60) day period, and accommodating their respective requests would require modification or replacement of the Pole, Utility will evenly allocate among such licensees the applicable costs associated with such modification or replacement.

9.4 Strengthening/Guying. Any strengthening of Poles through the use of guying to accommodate Licensee's Attachments shall be provided by Licensee at Licensee's expense and to the satisfaction of Utility as specified in Appendix B.

9.5 Utility Not Required to Relocate. No provision of this Agreement shall be construed to require Utility to relocate its Facilities on a Pole for the benefit of Licensee.

ARTICLE 10: REMOVAL OF POLES/OVERHEAD TO UNDERGROUND CONVERSIONS

10.1 Removal of Poles. If Utility desires at any time to take out of service any Poles on which Licensee has Attachments, Utility shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to remove such Poles. If, following the expiration of this time period or any extension thereof granted by Utility, Licensee has not yet removed and/or transferred all of its Communications Facilities from the Pole, Utility shall have the right to remove or transfer such Communications Facilities, using its own personnel or a contractor, and may charge Licensee 125% of the actual reasonable cost incurred by Utility to remove or transfer such Communications Facilities. If Licensee fails

to timely remove the Attachments and Utility is unable, in its sole judgment, to perform the work, the affected Attachments shall be subject to the Failure to Timely Transfer or Remove Facilities Charges set out in Appendix A until the affected Attachments are actually removed or transferred. Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's Communications Facilities.

10.2 Required Removal of Poles. Upon receipt of not less than thirty (30) days prior written notice from Utility to Licensee that any Pole must be removed by reason of any federal, state, county, municipal or other governmental requirement, or the requirement of a property owner, the license covering the use of such Pole shall terminate and Licensee's Communications Facilities shall be removed promptly from the Pole(s). If Licensee fails to remove its Communications Facilities from such Pole(s) within the prescribed time period, Utility shall have the right to remove Licensee's Facilities, using its own personnel or contractor, at the same time Utility removes the affected Pole(s), and Utility may charge Licensee 125% of the actual reasonable costs incurred by Utility for removal of Licensee's Facilities. If Licensee fails to timely remove its facilities, and Utility is unable, in its sole judgment, to perform the work, the affected Attachments shall be subject to the Failure to Timely Transfer or Remove Facilities Charge set out in Appendix A until the affected Attachments are actually removed.

10.3 Overhead to Underground Conversions. When Utility is planning to decommission and remove any Pole on which Licensee maintains Communications Facilities because Utility intends to convert an overhead electric distribution line to underground, Utility shall give written notice to Licensee of the planned conversion. In such instances, Licensee shall remove its Communications Facilities from the affected Poles at its own expense within sixty (60) days after receiving notice from Utility. If Licensee fails to remove its Communications Facilities within this time period or any extension thereof granted by Utility, Utility shall have the right to remove Licensee's Communications Facilities from such Poles, using its own personnel or contractors, at Licensee's expense. Utility shall give Licensee prior written notice of any such removal of Licensee's Communications Facilities. Utility shall not be liable for damage to Licensee's Communications Facilities, except to the extent provided in Section 14.1. If neither Licensee nor Utility performs the removal, the affected Communications Facilities shall be subject to the Failure to Timely Transfer or Remove Facilities Charge set out in Appendix A until the affected Communications Facilities are actually removed.

ARTICLE 11: TERMINATION OF PERMIT

11.1 Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate

its Communications Facilities on public or private property at the location of the particular Pole covered by the Permit or when Licensee surrenders a Permit pursuant to Section 11.2.

11.2 Surrender of Permit. Licensee may at any time surrender any Permit for any of its Attachments and may remove its Communications Facilities from the affected Pole(s), provided however that, before commencing any such removal, Licensee must obtain Utility's written approval, which approval shall not to be unreasonably withheld, delayed, or conditioned, of Licensee's plans for removal, including the name of the party 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 16. No refund of any fees or costs will be made upon removal.

ARTICLE 12: INSPECTIONS OF LICENSEE'S FACILITIES/INVENTORIES

12.1 Inspections.

12.1.1 Utility's Right to Inspect Attachments. Utility has the right at any time to inspect Licensee's Attachments. The purpose of the inspection will be to determine whether Licensee's Attachments comply with all Applicable Standards. 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 of waiting until written notice has been received. Licensee may have its own personnel present during any such inspections.

12.1.2 Inspection Costs. Licensee shall reimburse Utility for the actual costs Utility incurs in inspecting any of Licensee's Attachments when the inspection reveals a failure to comply with all Applicable Standards. Licensee shall also reimburse Utility for the actual costs Utility incurs in inspecting the affected Attachments to determine whether Licensee has brought such Attachments into compliance.

12.1.3 Duty of Full Compliance. Licensee agrees to bring its Attachments into full compliance with all Applicable Standards, at its sole expense, in the event that any inspection results in a finding by Utility that such Attachment does not fully comply with all Applicable Standards. Licensee shall bring such Attachment(s) into compliance with this Agreement thirty (30) days of receipt of notice from Utility or within such other time period agreed to by the Parties. For purposes of clarity, Licensee's Attachments will be required to comply with the version of the Applicable Standards in effect at the time of attachment, unless subsequent versions require retroactive effect.

12.2 No Liability. The making of any inspections under this Article 12, or the failure to do so, shall not operate to impose upon Utility any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations, or liability whether assumed under this Agreement or otherwise existing.

ARTICLE 13: UNAUTHORIZED OCCUPANCY OR ACCESS

13.1 Unauthorized Attachment Charge. If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued and remains in effect, Utility, without prejudice to its other rights or remedies under this Agreement, may assess a nonrecurring Unauthorized Attachment Charge (as specified in Appendix A) for each Unauthorized Attachment identified by pole location and pole number, which charge shall be paid based on (1) one year's presumed occupancy. In the event Licensee fails to pay such charge within thirty (30) days of receiving notification thereof, Utility has the right to remove such Communications Facilities, using its own personnel or a contractor, at Licensee's expense. Upon payment of the Unauthorized Attachment Charge, Licensee shall be permitted to seek a Permit for any such Unauthorized Attachment.

13.2 No Ratification of Unauthorized Attachment. No act or failure to act by Utility with regard to such unauthorized Attachment shall be deemed as ratification of the unauthorized Attachment and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by Utility of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations, and responsibilities of this Agreement in regards to such unauthorized Attachment from its inception.

ARTICLE 14: LIABILITY AND DAMAGES

14.1 Liability. Utility reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own electric utility service requirements. Each Party to this Agreement shall exercise reasonable precaution to avoid damaging the other Party's facilities and shall make an immediate report to the other of the occurrence of any such damage caused by the reporting Party's employees, agents, or contractors. Subject to Section 14.4, Utility agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of Licensee's facilities damaged by the negligence or willful misconduct of Utility, its employees, agents, or contractors. Licensee also agrees to reimburse Utility for all reasonable costs incurred by Utility for the physical repair of the Utility Facilities damaged by the negligence or willful misconduct of Licensee, its employees, agents, or contractors. Neither Party, however, shall be liable to the other Party for any fines, penalties, claims, or damages stemming from the interruption of or

interference with the other Party's service (including special, indirect, punitive, or consequential damages).

14.1.1 Licensee further agrees subject to Section 14.1.2: (i) to reimburse any Attaching Entity that is not a party hereto for all reasonable costs incurred by that non-party Attaching Entity for the physical repair of that non-party Attaching Entity's facilities damaged by the negligence or willful misconduct of Licensee, its employees, agents, or contractors and (ii) that Licensee shall not in any manner seek to hold a non-party Attaching Entity liable for any fines, penalties, claims, or damages stemming from the interruption of or interference with Licensee's service (including special, indirect, punitive, or consequential damages). Subject to Section 14.1.2, each such non-party Attaching Entity is explicitly made a thirdparty beneficiary of this Section 14.1.1.

14.1.2 Section 14.1.1 shall be null and void and unenforceable by or with respect to any non-party Attaching Entity, except to the extent that such non-party Attaching Entity has entered into a licensing agreement with Utility that contains a provision identical to Section 14.1.1, that provides Licensee with the same benefits and rights as those conferred upon non-party Attaching Entities by Section 14.1.1, and that is fully and equally enforceable by or for the benefit of Licensee as in Section 14.1.1.

14.2 Indemnification. Licensee, and any agent, contractor, or subcontractor of 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 expenses of litigation) for third party claims (excluding those covered by Sections 14.1.1 and 14.1.2 above) ("**Covered Claims**") arising from, Licensee's negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal, or operation by Licensee, or by Licensee's officers, directors, employees, agents, or contractors, of Licensee's Communications Facilities, except to the extent of Utility's negligence or willful misconduct giving rise to such Covered Claims.

14.3 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 Communications Facilities will not constitute or contain and will not generate any Hazardous Substances in violation of state or federal 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, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release such Hazardous Substances.

14.4 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Utility of the provisions of Wis. Stat. § 893.80, or any other applicable limits on municipal liability.

14.5 Procedures for Indemnification.

14.5.1 Utility shall promptly give Licensee notice 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 endeavor to give notice to Licensee no later than ten (10) calendar days after Utility receives written notice of the action, suit or proceeding.

14.5.2 Utility's failure to give the required notice within ten (10) calendar days shall not relieve Licensee of its obligation to indemnify Utility unless Licensee is materially prejudiced by such failure.

14.5.3 Licensee shall have the right at any time, by notice to Utility, to participate in or assume control of the defense of the claim. Licensee may utilize counsel of its choice. Utility shall 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 a third-party claim, it shall be bound by the results obtained by Utility.

14.5.4 If Licensee assumes the defense of a third-party claim as described above, Utility shall not assume liability for or settle, compromise or discharge any third-party claim without Licensee's prior written consent, and Utility will agree to any settlement, compromise or discharge of any third-party claim recommended by Licensee that releases Utility completely from such claim and does not establish a precedent that may adversely affect Utility in the future.

14.5.5 The Indemnification Procedures set forth in this Section 14.5 are intended to apply only to Licensee's indemnification obligations expressly set forth in this Agreement

and are not intended to create a separate obligation on the part of Licensee to generally indemnify Utility.

ARTICLE 15: DUTIES, RESPONSIBILITIES, AND EXCULPATION

15.1 **Duty to Inspect.** Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Poles, or the premises surrounding the Poles, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility's Poles and/or the premises surrounding the Poles, prior to commencing any work on Utility's Poles or entering the premises surrounding the Poles.

15.2 **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.

15.3 **DISCLAIMER. UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

15.4 **Missing Labels.** Utility does not warrant that all Poles are properly labeled or tagged. Licensee agrees to notify Utility immediately if it discovers that any labels or tags are missing or improper; however, Licensee shall not be liable for any injuries or damages caused by or in connection with improper or missing labels or tags or with Licensee's failure to so notify Utility.

15.5 **Duty to Supervise.** The Parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, servants, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other equipment of Utility, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury, or property. Licensee shall ensure that its employees, servants, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees 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, servants, agents, contractors and subcontractors with 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 deenergize 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.

15.6 Requests to De-Energize. In the event Utility de-energizes any equipment or line at Licensee's request and for Licensee's benefit and convenience in performing a particular segment of any work, Licensee shall reimburse Utility in full for all costs and expenses incurred in order to comply with Licensee's request for de-energization of any equipment or line. Before Utility deenergizes any equipment or line, it shall provide upon request an estimate of all costs and expenses to be incurred in accommodating Licensee's request, and upon reviewing such estimate, Licensee shall confirm whether it intends to continue or withdraw such request.

15.7 Interruption of Service. In the event that Licensee shall cause an interruption of service by damaging or interfering with any equipment of Utility, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages directly resulting therefrom and shall notify Utility immediately.

15.8 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 and removals and to engage in operations on Utility's Poles by Licensee's employees, servants, agents, contractors, or subcontractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, servants, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

ARTICLE 16: INSURANCE

16.1 Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

16.1.1 Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than \$500,000 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.

16.1.2 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 and coverage for property

damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCU coverage). Limits of liability not less than \$1,000,000 general aggregate, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence.

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

16.1.4 Umbrella Liability Insurance. Coverage to be in excess of 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.

16.1.5 Property Insurance. Each Party to this Agreement 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 fully protect against hazards of fire, vandalism and malicious mischief.

16.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Wisconsin 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, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article with the same limits. Prior to any such contractor or its subcontractors performing any work for Licensee under this Agreement, Licensee shall furnish Utility with a Certificate of Insurance for each such contractor or subcontractor.

16.3 Certificate of Insurance; Other Requirements.

16.3.1 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. The certificates shall reference this Agreement and all waivers of subrogation required by this Agreement. Utility shall be given written notice within thirty (30) days of cancellation or nonrenewal of insurance during the term of this Agreement.

16.3.2 Utility, in the name of its municipality, shall be named by as an "**Additional**

Insured” under all of the policies, except workers’ compensation, which shall be evidenced by an endorsement to the policy.

16.3.3 All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis.

16.3.4 Licensee shall defend, indemnify, and hold harmless Utility from and against payment of any deductible and payment of any premium on any policy required under this Article.

16.4 Limits. The limits of liability set out in this Article 16 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 Utility’s or Licensee’s exposure to risk.

16.5 Deductible Amounts. Licensee shall be fully responsible for any deductible or selfinsured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

ARTICLE 17: AUTHORIZATION NOT EXCLUSIVE

17.1 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 18: ASSIGNMENT

18.1 Limitations on Assignment. Licensee shall not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, without the prior written consent of Utility, which consent shall not be unreasonably withheld or delayed. However, it shall be unreasonable for Utility to withhold, condition or delay consent to an assignment made in connection with the pledge of Licensee’s assets subject to the Agreement as security for any Licensee financing with financial institutions, and therefore, such assignments shall be considered approved following thirty (30) days from receipt of notice by Licensor, unless notice of reasonable denial has been received by Licensee. Notwithstanding the foregoing, Licensee may assign its rights or obligations under this Agreement without the consent of Utility so long as such assignment is to an entity

acquiring all or substantially all of the assets of Licensee or to a subsidiary or Affiliate of Licensee, so long as Licensee provides written notice of such assignment to Utility. Licensee shall use commercially reasonable efforts to provide prior written notice of such assignment to Utility, but if prior notice is not feasible, Licensee shall provide written notice promptly after such assignment. Assignments made in violation of this Section 18.1 shall be deemed null and void.

18.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article 18 shall be allowed until the assignee or transferee (including assignment or transfer to any assignee or transferee described in Section 18.1) 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.

18.3 Sub-licensing. Without Utility's prior written consent, Licensee shall not sub-license any rights under this Agreement to a third party (including Licensee's Affiliate(s)), including but not limited to allowing third parties to place Attachments on Utility's Poles, 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 Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to the provisions of this Section 18.3.

ARTICLE 19: FAILURE TO ENFORCE

19.1 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.

ARTICLE 20: DEFAULT

20.1 Utility's Right to Terminate. Notwithstanding Utility's rights under Article 11, Utility shall have the right, pursuant to the procedure set out in Section 20.2 to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any material term or condition of this Agreement, including but not limited to the following circumstances, and has not cured such default within the time period set forth herein:

20.1.1 Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

20.1.2 Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority; or

20.1.3 Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 16.

20.2 Opportunity to Cure/Termination. Utility will notify Licensee in writing within ten (10) days, or as soon as reasonably practicable, of any condition(s) applicable to Section 20.1. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) days, or such longer period mutually agreed to by the Parties, and shall confirm in writing to Utility that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, Utility may immediately terminate this Agreement or any Permit(s). In the event of such termination, Licensee shall remove its Communications Facilities from the affected Poles within sixty (60) days of such termination. If Licensee fails to remove its Facilities within that sixty (60) day period or such other longer time period as the Parties may agree, Utility shall have the right to remove such Facilities, using its own personnel or a contractor, and may charge Licensee 125% of the actual reasonable cost incurred by Utility. If removal by Utility is impracticable, in Utility's sole judgment, the affected Attachments shall be subject to the Failure to Timely Transfer or Remove Facilities Charge set out in Appendix A until the affected Attachments are actually removed.

ARTICLE 21: TERM OF AGREEMENT

21.1 Term/Termination. This Agreement shall become effective as of the Effective Date, and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for an initial term of ten (10) years ("**Initial Term**"). The extension term of this Agreement is ten (10) years (the "**Extension Term**"), commencing on the expiration of the Initial Term, provided that Licensee is not then in default under this Agreement. Either Party may terminate this Agreement by giving the other Party written notice of its intention not to renew at least six (6) months prior to the end of the then current term. If no notice of termination is given prior to the end of the Extension Term, and provided that Licensee is not then in default, this Agreement shall automatically continue in force until terminated by either Party after one (1) year's written notice.

If to Licensee, to: Engineering Manager
Midwest Fiber Networks
6070 N Flint Road
Glendale, WI 53209
contractmanagement@midwestfibenetworks.com
(414) 672 - 5612

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

- 22.3 Entire Agreement. This Agreement supersedes all previous agreements, whether written or oral, between Utility and Licensee for placement and maintenance of Licensee's Communications Facilities on Poles within the geographical operating area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.
- 22.4 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 but rather it is the intent of the Parties that this Agreement be administered as if not containing the invalid provision.
- 22.5 Governing Law. The validity, performance, and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Wisconsin.
- 22.6 Incorporation of Recitals and Appendices. The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.
- 22.7 Compliance with Laws. The Parties shall comply with all applicable federal or state laws.
- 22.8 Dispute Resolution. In the event any dispute arises between the Parties under this Agreement, the Party seeking resolution of the dispute must submit written notice to the other describing the dispute and such Party's desire to resolve the dispute in accordance with the provisions of this Section 22.8, unless the Parties at any time mutually agree in writing to dispense with the dispute resolution process under this Section 22.8 for a particular dispute. If the Parties are then unable to resolve such dispute in the normal course of business, each of the Parties shall promptly appoint a designated representative who has authority to settle the dispute. The designated representatives shall meet as often

as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to the dispute within sixty (60) days after the Parties' appointment of the designated representatives, then either Party may resort to remedies available under law or equity.

The Parties have executed this Agreement on the day and year first written above.

[SIGNATURE PAGES FOLLOW]

CITY OF OCONOMOWOC, WISCONSIN

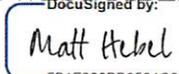
BY: _____

NAME: _____

TITLE: _____

DATE: _____

MIDWEST FIBER NETWORKS, LLC

BY:  _____
5B1F860BB0594C6...

NAME: Matt Hebel _____

TITLE: VP of Operations _____

DATE: 3/17/2020 _____

**APPENDIX A
POLE ATTACHMENT FEES AND CHARGES**

1. **Annual Pole Attachment Fee:** (fee will be charged on a per-Pole basis per Section 3.2)
 - Effective Date: January 1, 2019: > *Date to be updated*
 - Single: \$14.02
 - Double: \$7.01
 - Triple: \$4.67

2. **Adjustment of Annual Pole Attachment Fee:** Rates to be recalculated every year in accordance with Exhibit 1 to this Appendix A.

3. **Non-Recurring Fees:**
 - Permit Application Fee\$100.00 per Permit Application (10 Poles)
 - Permit Application Fee\$250.00 per Permit Application (11 or more Poles)
 - Pre-Construction Survey Fee Utility's Actual Cost
 - Make-Ready Work ChargesSee Article 3 of Agreement
 - Miscellaneous ChargesSee Article 3 of Agreement
 - Inspection Fees.....See Section 12.1.2 of Agreement **NOTE: Non-Recurring Fees shall increase once each year at the rate of 3%.**

4. **Unauthorized Attachment Charge:** • 3 x Annual Average Attachment Fee, per occurrence.

5. **Failure to Timely Transfer or Remove Facilities Charge:** • ¼ Annual Average Attachment Fee per day, per Pole.

NOTE: In accordance with Section 3.12, Utility shall provide Licensee with prior written notice before levying this charge.

**Exhibit 1 to
Appendix A**

[Attached]

SMRH:4827-8028-3548.1



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/17/2020

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

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

PRODUCER Associated Benefits and Risk Consulting, LLC 100 N. Corporate Dr., #100 Brookfield WI 53045	CONTACT NAME: Sharon Miksic PHONE (A/C, No, Ext): 800-837-8822 FAX (A/C, No): 262-542-9750 E-MAIL ADDRESS: DivCerts@AssociatedBRC.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED Midwest Fiber Networks, LLC 6070 N. Flint Rd. Glendale WI 53209	INSURER A: Travelers Property Casualty Company of America NAIC # 25674	
	INSURER B: Colony Insurance Company NAIC # 39993	
	INSURER C: Travelers Insurance Company NAIC # 24805	
	INSURER D: Travelers Casualty & Surety Company of America NAIC # 19038	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 841598940

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ZPP-11S04325	9/17/2019	9/17/2020	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
D	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA-4N220874-19-15-G	9/17/2019	9/17/2020	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							Comp/Coll ded	\$ 1,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP0L734159	9/17/2019	9/17/2020	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$
								\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB-4J236344	9/17/2019	9/17/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 500,000
							E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000
C B	CyberTech E&O Pollution Liability			ZPL-14T35645-12 CSP304095	9/17/2019 11/5/2018	9/17/2020 11/5/2020	Each Occurrence 2,500 Ded	5,000,000 1,000,000

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

Other Named Insureds: Midwest Networks Development, LLC.

FOLLOWING ENDORSEMENTS APPLY TO THE NAMES/PROJECTS/EVENTS LISTED BELOW ONLY IF REQUIRED BY WRITTEN CONTRACT OR AGREEMENT: General Liability: Blanket Additional Insured - On-going Operations and Blanket Waiver of Subrogation per Form CGD417 (07/08); Primary and Non-Contributory with respect to certain other insurance per Form CGD425 (07/08); Blanket Additional Insured Contractors per Form CGD246 (08/05); 30 day notice of cancellation/non-renewal provided by us per Form ILT400 (12/09). Automobile Liability: Blanket Additional Insured and Waiver of Subrogation per Form CAT353 (03/10); Workers Compensation: Blanket Waiver of Subrogation per Form WC000313 (04/84). Umbrella: Follows Form. Blanket Waiver of Subrogation and Primary & Non-Contributory per Form EU0001 (07/16). The additional insured and waiver of subrogation coverages indicated by the box(es) See Attached...

CERTIFICATE HOLDER

Utility Manager City of Oconomowoc 808 South Worthington Street Oconomowoc WI 53066	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--

© 1988-2015 ACORD CORPORATION. All rights reserved.



ADDITIONAL REMARKS SCHEDULE

AGENCY Associated Benefits and Risk Consulting, LLC		NAMED INSURED Midwest Fiber Networks, LLC 6070 N. Flint Rd. Glendale WI 53209	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

checked above are provided by the forms listed and only extend coverage if required of the insured by a written contract or agreement.

Utility Manager and City of Oconomowoc are included per the forms listed.

OCONOMOWOC UTILITIES - VOLUME STATISTICS

	Current Month				Year To Date			
ELECTRIC	kWh Sold Mar-20	kWh Sold Mar-19	Volume Increase (Decrease)	Percent Increase (Decrease)	kWh Sold Mar-20	kWh Sold Mar-19	Volume Increase (Decrease)	Percent Increase (Decrease)
Residential	5,497,806	5,634,183	(136,377)	-2.4%	18,177,332	18,761,636	(584,304)	-3.1%
Commercial	1,858,429	1,952,939	(94,510)	-4.8%	6,227,805	6,018,096	209,709	3.5%
Large Power	9,487,456	10,018,366	(530,910)	-5.3%	28,519,001	30,146,361	(1,627,360)	-5.4%
Public Street/Hwy Ltg	55,239	53,889	1,350	2.5%	195,950	197,729	(1,779)	-0.9%
Private Yard Lighting	2,601	4,528	(1,927)	-42.6%	9,168	16,174	(7,006)	-43.3%
Total Electric Sales	16,901,531	17,663,905	(762,374)	-4.3%	53,129,256	55,139,996	(2,010,740)	-3.6%
WATER	Gallons Sold (Thousands) Mar-20	Gallons Sold (Thousands) Mar-19	Volume Increase (Decrease)	Percent Increase (Decrease)	Gallons Sold (Thousands) Mar-20	Gallons Sold (Thousands) Mar-19	Volume Increase (Decrease)	Percent Increase (Decrease)
Residential	19,383	18,668	715	3.8%	62,502	61,868	634	1.0%
Multi Family	3,888	3,599	289	8.0%	12,482	11,605	877	7.6%
Commercial	9,235	9,441	(206)	-2.2%	28,878	27,717	1,161	4.2%
Industrial	2,748	2,764	(16)	-0.6%	8,322	8,291	31	0.4%
Total Water Sales	35,254	34,472	782	2.3%	112,184	109,481	2,703	2.5%
WASTEWATER	Gallons Sold (Thousands) Mar-20	Gallons Sold (Thousands) Mar-19	Volume Increase (Decrease)	Percent Increase (Decrease)	Gallons Sold (Thousands) Mar-20	Gallons Sold (Thousands) Mar-19	Volume Increase (Decrease)	Percent Increase (Decrease)
Residential	19,333	18,599	734	3.9%	62,319	61,483	836	1.4%
Commercial A	11,591	11,632	(41)	-0.4%	37,453	33,745	3,708	11.0%
Commercial B	1,021	1,139	(118)	-10.4%	3,295	3,975	(680)	-17.1%
Industrial A	1,627	1,647	(20)	-1.2%	5,061	4,794	267	5.6%
Industrial B	876	791	85	10.7%	2,364	1,999	365	18.3%
Total Gallons Treated	34,448	33,808	640	1.9%	110,492	105,996	4,496	4.2%

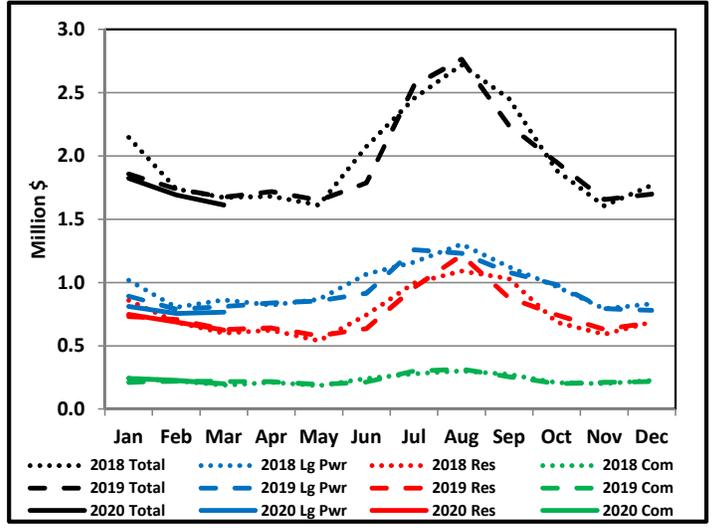
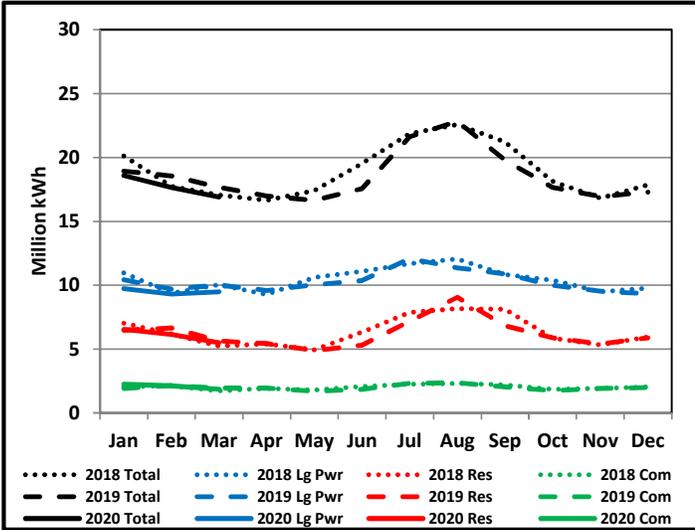
Note: Quantities sold are amounts invoiced during the month. Due to the timing of billing cycles, the amounts may not match consumption during the calendar month.
Y:\Utility Billing\[Sales for Committee.xlsx]Mar 2020

Oconomowoc Utilities: Monthly Volume & Revenue Summary

Metered Volume Units

Metered Revenue Dollars

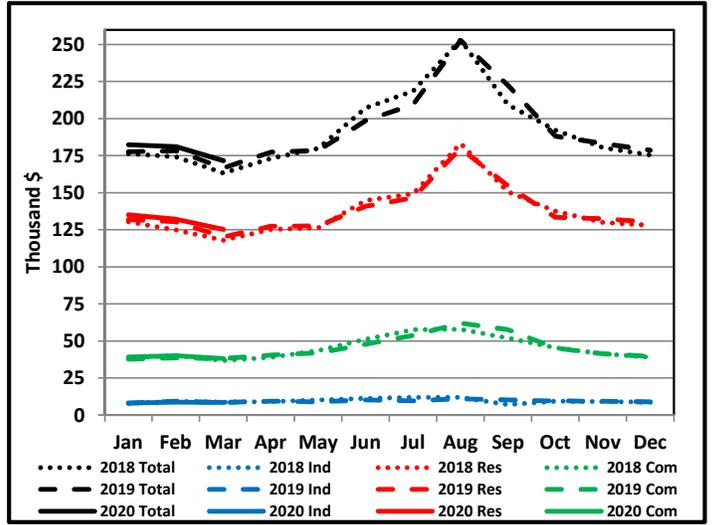
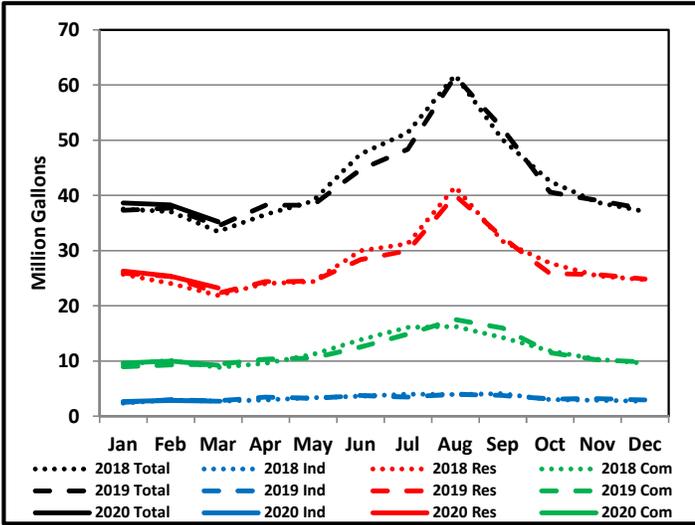
Electric



Note: Charts exclude non-metered revenue (pole attachments, etc.)

Note: Quantities represent amounts invoiced. Due to timing of mid-month billing cycles, line-loss, etc., amounts will differ from volume purchased from WPPI.

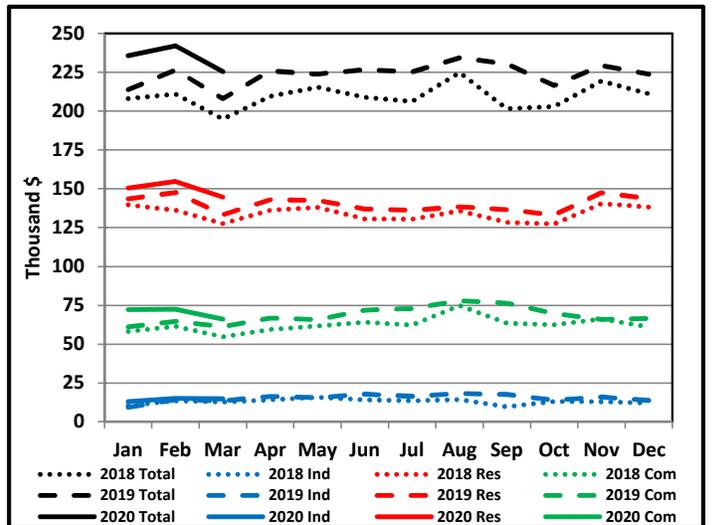
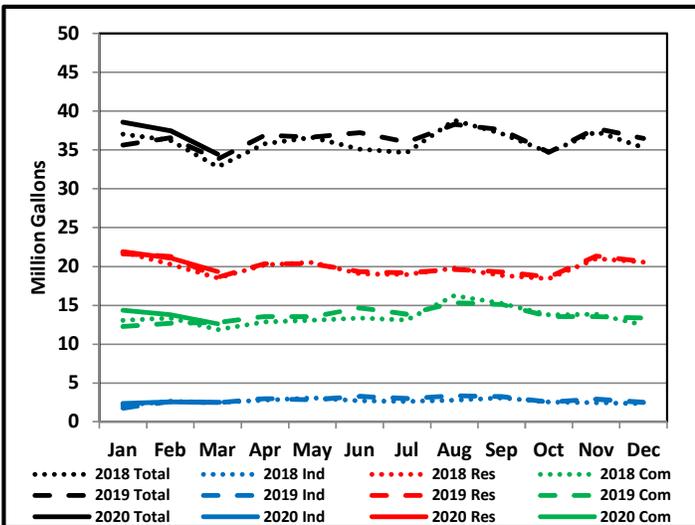
Water



Note: Charts exclude non-metered revenue (fire protection, etc.)

Note: Quantities represent amounts invoiced. Due to timing of mid-month billing cycles, main-breaks, etc., amounts will differ from volume pumped at well sites.

Wastewater



Note: Charts exclude adjoining sanitary districts and non-metered revenue (septic disposal, etc.)

Note: Quantities represent amounts invoiced. Due to timing of mid-month billing cycles, external sanitary districts, rain-seepage, etc., amounts will differ from volume received at treatment facility.

COMMITTEE REPORT – April 2020
Utility Billing

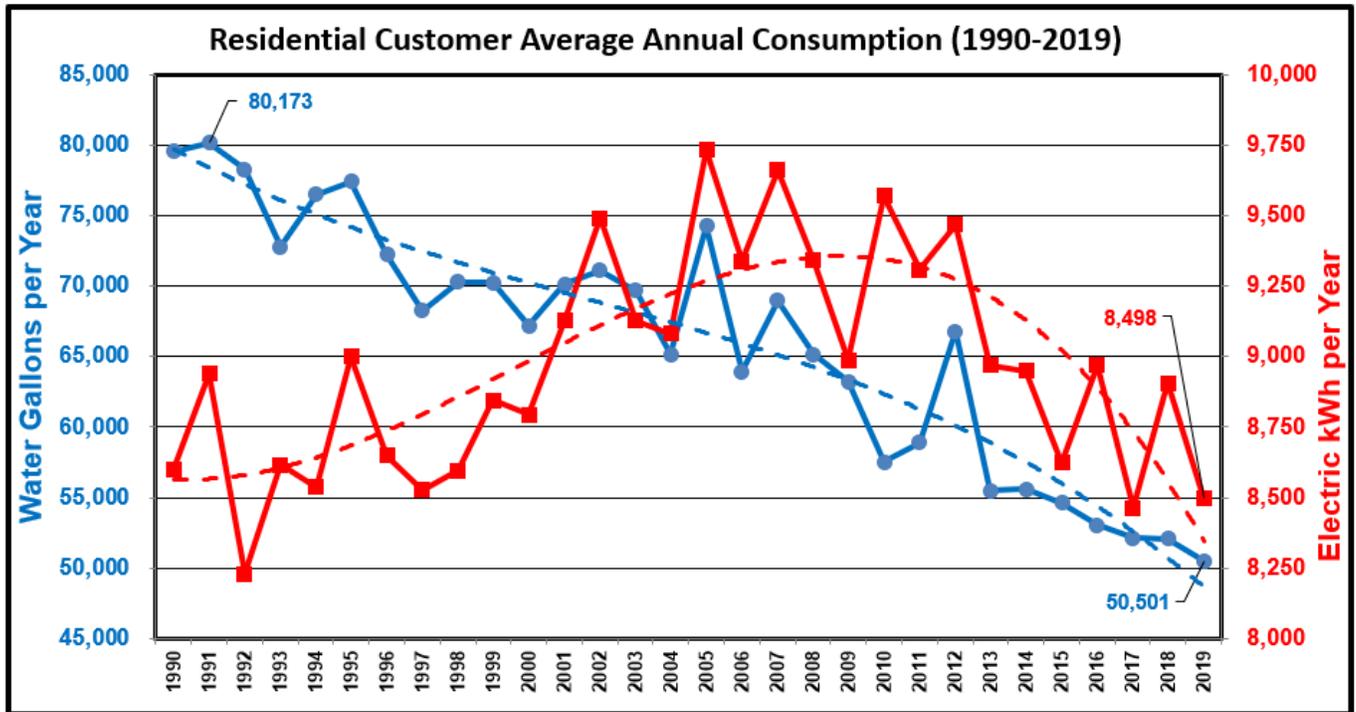
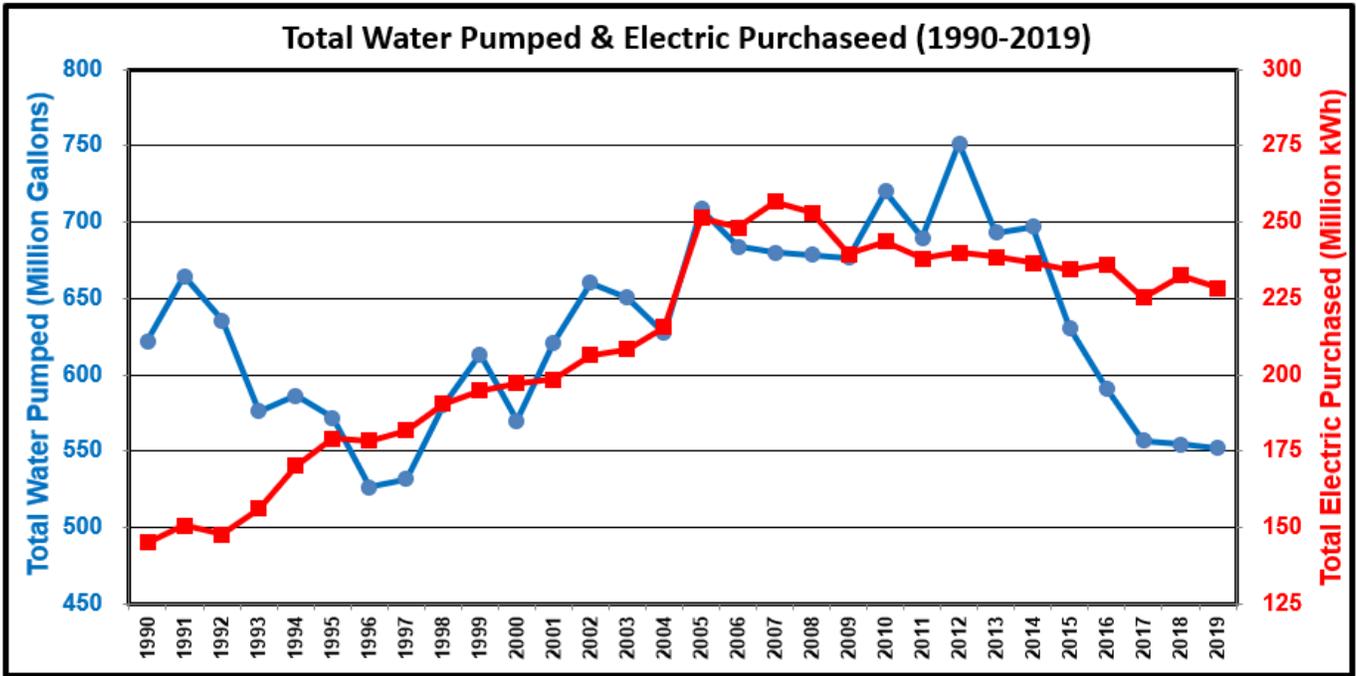


- **COVID-19 Impact on Utility Billing** – Our utility billing staff has implemented measures directed by the Public Service Commission to assist customers with their energy and water costs. In a typical year, we are not allowed to disconnect residential customers for non-payment during the winter months, if the loss of electric power will impact their source of heat. This “disconnection moratorium” usually ends on April 15. We are currently not disconnecting any customers for non-payment of utility bills. In addition, we are not assessing late fees on past due balances. On our most recent residential invoices, we included information for customers to apply for payment assistance programs. The state recently adjusted the criteria for qualifying for aid, reducing the income requirement to being based on the most recent one month of income (instead of the prior three months).

We are closely monitoring the impact of potential reduced and delayed payments from customers. As of mid-April, the percent of residential customers with a balance over thirty days past due increased to 8.7% compared to 6.1% at this time last year. Because of the above-mentioned winter disconnection moratorium, we are at our typical annual peak of past due customers. Without the threat of potential disconnection, the variance will likely grow in coming months. Because more residents are now home, it is also likely that residential electric and water consumption may increase compared to the prior year. The impact on payments received from commercial customers in aggregate so far has been less noticeable. However, we also expect to see more of an impact in the future.

- **Year End Reporting** – We have filed our 2019 Annual Report with the Public Service Commission. The report includes 120 pages of financial and operating details for the water and electric utilities. The wastewater utility is not regulated by the PSC, and therefore not included. The electric utility earned a rate of return of 5.60%, an increase from the 5.25% the prior year. The rate of return for the water utility dropped to 4.45%, down from the 5.60% the prior year. Both utilities continued their overall long-term trends of average customer efficiency having a larger impact than the continued incremental growth in the number of residential customers. In 2019, there was a decrease in total power purchased and total water pumped. The average consumption per residential customer had a more noticeable decrease. On the attached charts, the scale of the vertical axis is adjusted to highlight the changes.

John Schuh, CPA
Utility Accounting Manager



COMMITTEE REPORT – March & April 2020
Electric Utility



The following **projects** have been completed by April 15, 2020

- Testing safety equipment, protective grounds and hot sticks
- Re-decking of trailers in preparation of new bore rig equipment
- Inspections completed for PSC on circuits 73, 74 and 86
- Line clearance of overhead power lines

Services:

- Crews completed 6 new tickets in March and 5 new service tickets in April.
- Customer calls: (*tickets that are not planned and affect scheduled work.*) 7 in March and 6 in April, to include DC/RC, miscellaneous problems, service relocates, trouble calls that are not OMU's

- **Street Light Tickets:** 6 in March and 4 in April

Traffic control lights:

- None

Assist Other Departments:

Training: Bore operator school

Team safety meeting

WCTC In House all crew - Leading a Multi-Generational Workforce

Major projects that have been started:

- Finish three phase service at Tower Ridge apartments
- Substation distribution and switching procedures are being updated
- Maintenance of Cooney Transformer 8 Circuit Switcher
- Replacement of boards in Cooney Transformer 8 Load Tap Changer
- Install all coreflow services from winter new services
- PSC repairs on circuits 73,74 and 86
- Install new switchgear for better reliability by Lisbon Road and HWY P



COMMITTEE REPORT- March & April - 2020 Water Utility

The following are updates for ongoing projects:

- Well 8 Pumping Station – engineering design and bid services (Strand Assoc)
 - DNR/PSC kickoff meeting – 4/2
 - Soil borings for pump station design – 4/23 and 4/24
- Water Tower Maintenance Program
 - Crew mobilized and erected containment at North elevated tower
 - Sandblasted to bare steel, 3 coat paint system applied, same logo and colors
- Well #7 Booster Pumping Equip and Well #3 Motor Replacements
 - Preparing RFQ for work to be completed after hydrant flushing season
- Powerhouse Building
 - Roof replacement RFQ being prepared
 - Coordinate transformer removal with OU staff

Customer Interactions:

- March - 12 new meters were installed and 6 meter issues were addressed
- April – 20 new meters were installed and 0 meter issues were documented

Training:

- MEUW – ongoing monthly topics
 - March - bloodborne pathogens
 - April – skipped due to COVID19 pandemic

Specialty Work:

- UCMR4 water sampling
- Update of Emergency Response Plan - pandemic event example (COVID19)
- New water operator employee training – draft checklists, prep for 90-day reviews
- Hydrant flushing notifications in newspaper and website (May 4 – June 5)

Respectfully submitted:

Scott Osborn P.E.

Water Superintendent

Wastewater Operations Summary

March 2020

Precipitation for February 2020 was 1.08" and as of March 18, 2020 we had .90". The Influent flow average for February was 2.42 MGD. The average flow for March 2020 is 2.75 MGD.

Permit parameters for February are as follows:

Parameter	Influent	Effluent	Permit Limits	% Reduction
BOD - mg/l	211	2.0	15	99.0%
TSS - mg/l	202	.9	15	99.6%
Phos. - mg/l	4.68	.7	0.95	85.0%
Fecal - col/100ml	X	X	400#/100ml	Not run till spring
Amm. N - mg/l	20.5	.07	N/A	99.0%

Rice / Neshap Testing complete and we passed the tri annual testing

Pandemic preparedness has consumed staff time

Administration building has been secured with only minimum outside individuals allowed to enter.

Daily disinfection has commenced

Wastewater Operations Summary

April 2020

Precipitation for March 2020 was 2.98" and as of April 17, 2020 we had .07". The Influent flow average for March was 2.909 MGD. The average flow for April 2020 is 2.91 MGD.

Permit parameters for February are as follows:

Parameter	Influent	Effluent	Permit Limits	% Reduction
BOD - mg/l	184	3.0	15	98.3%
TSS - mg/l	174	1.7	15	99.0%
Phos. - mg/l	3.98	.66	0.95	83.0%
Fecal - col/100ml	X	X	400#/100ml	Not run till spring
Amm. N - mg/l	17.8	.73	N/A	99.7%

Pandemic response has consumed staff time

Daily disinfection has continued

SCADA system upgrade has started

Engineering for the design of the digester and HVAC project has been put off till the engineering firm is allowed back into the WWTP

Plant Effluent UV disinfection will start around April 27 to meet WPDES permit requirements of May 1.