



CONSTRUCTION INDUSTRY ARBITRATION RULES
Demand for Arbitration

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box. <input type="checkbox"/> There is no additional administrative fee for this service.					
Name of Respondent Town of Leverett			Name of Representative (if known) Donna MacNicol, Esq.		
Address: 9 Montague Road			Name of Firm (if applicable) MacNicol & Tombs, LLP		
			Representative's Address: 393 Main Street, P.O. Box 985		
City Leverett	State MA	Zip Code 01054	City Greenfield	State MA	Zip Code 01302-0985
Phone No.		Fax No.	Phone No. 413-772-8600		Fax No. 413-772-1999
Email Address:			Email Address: mtb.email@verizon.net		
The named claimant, a party to an arbitration agreement dated <u>June 27, 2013</u> , which provides for arbitration under the Construction Industry Rules of the American Arbitration Association, hereby demands arbitration.					
ARBITRATION CLAUSE: Please indicate whether the contract containing the dispute resolution clause governing this dispute is a standard industry form contract (such as AIA, ConsensusDOCS or AGC) or a customized contract for the specific project. Contract Form: <u>Customized Contract</u>					
THE NATURE OF THE DISPUTE Breach of contract for failure to pay amounts due for work performed under contract; quantum meruit/unjust enrichment for refusal to make equitable adjustments to contract price and refusal to extend time for completion; breach of covenant of good faith and fair dealing. Please see the attached Arbitration Demand, incorporated herein.					
Dollar Amount of Claim \$ <u>1,008,375.00</u>			Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input checked="" type="checkbox"/> Other <u>Interim/Declaratory</u>		
Amount Enclosed \$ <u>3,500.00</u> In accordance with Fee Schedule: <input checked="" type="checkbox"/> Flexible Fee Schedule <input type="checkbox"/> Standard Fee Schedule					
PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE: Attorney with experience in public construction projects and telecommunications					
Hearing locale requested <u>Springfield</u>			Project site <u>Leverett, Massachusetts</u>		
Estimated time needed for hearings overall: _____ hours or <u>3.00</u> days			Specify type of business: Claimant <u>Telecommunications Contractor</u> Respondent <u>Municipality</u>		
You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.					
Signature (may be signed by a representative) <u>Ben Dunlap</u> Date: <u>11/21/2014</u>			Name of Representative Ben N. Dunlap		
Name of Claimant Millennium Communications Group, Inc.			Name of Firm (if applicable) LeClairRyan, A Professional Corporation		
Address (to be used in connection with this case) 11 Melanie Lane			Representative's Address One International Place, 11th Floor		
City East Hanover	State NJ	Zip Code 07936	City Boston	State MA	Zip Code 02110
Phone No. 973-503-1313		Fax No.	Phone No. 617-502-8205		Fax No. 617-502-8255
Email Address: rcassel@millenniuminc.com			Email Address: ben.dunlap@leclairryan.com		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Respondent.					
Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.					

AMERICAN ARBITRATION ASSOCIATION

MILLENNIUM COMMUNICATIONS
GROUP, INC.,

Claimant,

vs.

TOWN OF LEVERETT,

Respondent.

Case No.

DEMAND FOR ARBITRATION

The Claimant, Millennium Communications Group, Inc. (“Millennium”), by way of this Demand against the Respondent, Town of Leverett (“Town”), hereby alleges as follows:

I. Introduction

1. This Demand arises from the Town’s failure and refusal to pay for work performed and materials supplied by Millennium and other breaches and wrongful conduct in connection with a project for the construction of a Fiber to the Home (FTTH) Network, awarded to Millennium in a public bid pursuant to G.L. c. 30, § 39M (the “Project”). The Project consists of the construction, installation, testing, and maintenance of approximately 39 miles of aerial fiber optic cable, with approximately 800 fiber optic drops to homes in Leverett, Massachusetts.

2. As further alleged herein, Millennium has diligently performed its obligations pursuant to its contract with the Town and is entitled to monthly progress payments for work performed and materials supplied. The Town has made partial payment under the contract but has without justification failed and refused pay for work performed and materials supplied, in breach of its contractual obligations to Millennium.

3. In addition, design deficiencies, delays in make-ready work, other owner-caused delays, owner-driven changes, and unforeseen conditions have made it necessary for Millennium to perform additional work outside the original scope of the contract. Millennium has incurred additional costs as a result of such additional work. The Town has without justification failed and refused to make equitable adjustments to the time for performance and contract price to compensate Millennium for increased costs as requested by Millennium in proposed Project change orders.

4. Further, the Town has wrongfully created pretexts to avoid paying Millennium amounts due under the contract. The Town has arbitrarily sought to impose additional obligations not contained in the parties' contract as a condition of payment and has wrongfully sought to interfere with the contractual relationships between Millennium and its surety and subcontractors and vendors, all with the wrongful purpose and motive of coercing Millennium to accept less than the value of the work performed, materials supplied, and services rendered.

II. Facts

A. Parties

5. Millennium is a network communications firm with a usual place of business in East Hanover, New Jersey. Millennium has more than 35 years' experience in the business of constructing and installing communications networks, including fiber optic networks.

6. The Town of Leverett is a political subdivision of the Commonwealth of Massachusetts.

B. Background

7. In or about 2012, the Town formed a volunteer Broadband Committee to explore options for funding, design, and construction of a broadband network for Leverett residents.

Based on Broadband Committee recommendations, the Town moved forward with a project to design and construct a broadband network.

8. The Town retained G4S Technology LLC (“G4S”) to design the broadband network construction project.

9. Pursuant to G.L. c. 30, § 39M, the Town issued an Invitation for Bids for the Project dated May 15, 2013. The scope of the Project is set forth in the design documents prepared by G4S.

10. As the lowest responsible and eligible bidder, Millennium was awarded the Project. The parties executed an agreement for the construction of the Project dated June 27, 2013 (the “Contract”). The original Contract price was \$2,275,731.00. The Contract was executed by Richard P. Brazeau, Chair of the Select Board on behalf of the Town as the Project owner. A true and accurate copy of the Contract is attached hereto as Exhibit A.

11. Section 20 of the Contract provides for arbitration of disputes arising from the Contract.

12. The Town retained Tim Haas, a Senior Network Engineer at Holyoke Gas & Electric, as the owner’s representative to perform project management services on behalf of the Town.

13. The Broadband Committee communicates regularly with Leverett residents, Mr. Haas, and Millennium regarding the Project but is not a party to the Contract and has no formal role in administering the Contract.

14. The members of the Broadband Committee have no particular experience in design, construction, or installation of fiber optic networks, and, as individuals, they lack sufficient expertise to evaluate the performance of work by Millennium and its subcontractors.

C. Town's Wrongful Denial of Change Order Requests to Extend Time for Performance and Compensate for Owner-Caused Delays

15. The Project includes installation of fiber optic equipment and cable on utility poles, with aerial or underground service connections to homes.

16. The Town assumed and undertook responsibility for providing critical components for the Project, including but not limited to collection of important information regarding utility poles to which Millennium would attach fiber optic cable; information for applications to utilities and other entities for the purpose of arranging "make-ready" work for the utility poles to receive fiber optic cable installed by Millennium; and construction of "hub buildings" to house certain equipment for the Project.

17. The components described in Paragraph 16 above were critical to Millennium's ability to perform its work in a timely and cost-effective manner.

18. The Town represented that the components described in Paragraph 16 above would be provided in a timely manner and that make-ready work would be completed in sufficient time for Millennium to meet the Project completion date.

19. The Town at all times knew the importance of meeting planned dates for providing the components described in Paragraph 16 above and completing make-ready work.

20. The critical activities for which the Town assumed responsibility had to be performed in a sequence such that Millennium was given access for its work in contiguous areas to enable the work to be performed efficiently and within the Contract completion date.

21. The Town failed to fulfill the obligations it assumed on the Project. As a result, Millennium has been forced to work in a piecemeal fashion with its crews moving back and forth with little ability to complete contiguous areas as planned. Delays and disruptions have resulted in substantial increased costs and increased time for completion of the work.

22. Following execution of the Contract, the Town provided utility pole information to Millennium, and work on the pole applications began promptly thereafter. Millennium, acting for the Town, was given the authority to perform administrative functions on behalf of the Town with the owners of the poles, (power and telephone typically) and had limited oversight in the day to day activities of the pole licensing process. However, all payments, official correspondences, disputes, or actions outside of this limited oversight, are the responsibility of the new attachee, in this case, the Town of Leverett. While Millennium could query status reports and updates, the pole owners expected direct contact with the attachee.

23. Millennium prepared the first set of pole applications, consisting of 800 poles, for both Western Massachusetts Electric Company (“WMECO”) and Verizon, during the week of July 15, 2013, using data contained in spreadsheets supplied by the Town and verified by Millennium personnel. In the course of preparing the applications, Millennium discovered inaccurate and missing data in the Town’s spreadsheets and notified the Town of the errors. The Town acknowledged the errors and instructed Millennium that a member of the Broadband Committee would be updating the data and forwarding same to Millennium for inclusion in the applications. Millennium received the corrected pole data on or about July 22, 2013.

24. Millennium submitted four sets of revised pole applications to WMECO during the week of July 22, 2013. At or about the same time, Millennium was informed by Verizon that the form used for the Verizon pole applications, which was submitted on a form provided to Millennium by the Town, was incorrect. Millennium was required to revise and resubmit the Verizon pole applications in the correct forms.

25. Millennium submitted the final pole applications to the town for submission to Verizon on or about August 7, 2013, with detailed instructions that the town was to include a

separate check for each application. On or about September 3, 2013, Millennium received notice from Verizon that the Town had submitted a lump sum payment in one check for all Verizon pole applications, counter to Millennium instructions. Millennium immediately informed the Town of this error.

26. On or about September 20, 2013, the Town issued payment to Verizon in the form of separate checks for each pole application. The payment error resulted in significant delays in conducting the joint utility ride outs.

27. Joint utility ride outs took place from December 2013 through February 2014.

28. On or about February 21, 2014, Millennium received notice from Verizon that the Town had submitted a lump sum payment in one check for make-ready work, again, counter to specific Millennium instructions against such action to the Town. Verizon returned the check. The Town issued separate checks for make-ready work in March 2014.

29. The expected timeline for commencement of construction on the project was based upon Millennium's initial completion of pole applications, which occurred on July 15, 2013. From that pole application completion date, the 60-day period for the joint utility ride should have closed in the beginning of October 2013. Pursuant to WMECO and Verizon tariffs, make-ready work should have been completed in March or April 2014, allowing construction to commence immediately thereafter. This make-ready work was not completed until October of 2014, a timeline that was totally out of Millennium's control.

30. These owner-caused delays in the pole application process and payment, as well as in the completion of make-ready work, made it impossible for Millennium to commence construction in March or April 2014, as originally planned.

31. In addition, the Town is obligated to deliver complete “hub buildings” to house certain equipment in connection with the Project. The Town failed to deliver complete hub buildings by September 1, 2014, as required by the Contract, causing additional delays and making it impossible for Millennium to perform certain necessary work to advance the Project. The “hub buildings” were not delivered until November 10, 2014.

32. As a result of critical delays caused by the Town, including but not limited to delays in the pole application process and payment, completion of certain make-ready work, and completion and delivery of the hub buildings (the “Delays”), Millennium has incurred and will incur additional costs to perform work. These costs include additional management and personnel, equipment rental, overhead, and additional costs associated with performing work in winter conditions, due to the fact that such Delays will require that work be performed during the winter months of 2014 into 2015.

33. Millennium submitted proposed project Change Orders seeking equitable adjustment for additional costs associated with the Delays and an extension of time for performance of the work.

34. The Town allowed a partial extension of time for performance but unreasonably and arbitrarily denied Millennium’s request for a sufficient extension of time to account for the Delays and an equitable adjustment of the Contract price associated with the Delays.

D. Town’s Wrongful Denial of Change Order Requests for Differing Site Conditions and Owner-Requested Changes

35. Portions of the Project require installation of fiber optic cable underground. As set forth in the bid documents, the original Project scope calls for use of existing conduit for certain underground installations. Upon inspection, which included excavating existing conduit, Millennium has discovered that site conditions differ dramatically from the design set forth in the

bid documents. In particular, much of the “existing conduit” referred to in the bid documents is blocked, too damaged to use, or is not connected to anything.

36. Based on differing site conditions discovered in the field, Millennium has requested a Change Order for equitable adjustment of the Contract price to compensate for additional costs incurred in installing cable underground where “existing conduit” is unusable. The Town has denied such Change Order requests, claiming that Millennium must use “existing conduit” whether it is usable or not.

37. The Town’s denial of Millennium’s Change Order requests concerning additional costs of underground installation where “existing conduit” is unusable is unjustified and demonstrates lack of good faith.

38. The Town has requested installation of fiber optic drops at additional homes beyond the approximately 800 set forth in the original Contract scope. Millennium has requested a Change Order for such additional work to compensate for additional costs.

39. The Town has wrongfully and without justification denied Millennium’s request for an equitable adjustment to the Contract price to compensate for additional costs associated with installation of fiber optic drops at additional homes.

E. Town’s Unjustified Refusal to Pay Amounts Due and Owing for Work Performed and Materials Supplied

40. Millennium and its subcontractors and vendors performed work and supplied materials pursuant to the Contract. The Town is obligated under the Contract to make monthly progress payments for work performed and materials supplied. The Contract requires payments to be made within 30 days of Millennium’s submission of an application for payment.

41. Millennium submitted, and the Town paid, eleven (11) monthly applications for payment for work performed and materials supplied through July 2014.

42. On or about August 31, 2014, Millennium submitted Payment Application No. 12, for work performed and materials supplied through August 2014.

43. On September 25, 2014, the Town claimed for the first time that submittal of subcontractor and vendor lien waivers was a condition of progress payments. The Town claimed that non-submittal of subcontractor and vendor lien waivers with Millennium's payment applications is a "material breach" of the Contract and that Millennium is in "default" on that basis.

44. Millennium submitted, and the Town paid, eleven (11) payment applications before the August 31, 2014 payment application. None of the previous eleven (11) payment applications was accompanied by a subcontractor or vendor lien waiver, and the Town did not, at any time, dispute any payment application on that basis or otherwise object or insist upon submission of such waivers. By accepting without objection the previous eleven (11) payment applications without lien waivers, the Town demonstrated that such waivers are not required and, in any event, that their submission or lack of submission is in no way "material" to the parties' agreement.

45. On September 29, 2014, the Town notified Millennium that no amount of Payment Application No. 12 would be paid, purportedly on the basis of non-submittal of lien waivers.

46. The Contract provides in Section 11 that upon completion of the network installation work, the Contractor shall perform standard tests showing that the work meets applicable performance standards set forth in the Project specifications. The Contractor thereafter is to notify the Town that the work is ready for testing and acceptance by the Town. The

Contractor is entitled to full payment for the work completed upon completion of acceptance testing for the work.

47. In contrast to full payment for complete installation under Section 11 of the Contract, monthly progress payments pursuant to Section 5 of the Contract are not contingent upon inspection of the work by the Town.

48. Network installation work is ongoing and has not been presented to the Town for testing and acceptance.

49. As part of the Project an Optical Network Terminal (“ONT”) is installed at each home to convert fiber optic light signals to copper/electric signals.

50. On September 25, 2014, Millennium informed the Town of an issue with ONT installation by a subcontractor, relating to connection of certain control wires. Millennium advised the Town that payment for installation of the ONTs in the amount of approximately \$32,000 would be withheld from the subcontractor until the subcontractor’s completion of corrective work.

51. On September 25, 2014, after Millennium’s communications with the Town regarding the ONT installation issue, the Town issued a letter claiming that Millennium was in “material breach” of its obligations under the Contract purportedly based on “reports” of improper ONT installation by Millennium’s subcontractors. On information and belief, the “reports” of ONT installation referred to in the Town’s September 25 letter were based on ad hoc observations by individual members of the Broadband Committee.

52. The Town’s claim of “material breach” based on the ONT issues was vastly overstated and premature, because none of the ONT installation work had been completed or

presented by Millennium for inspection by the Town. Furthermore, as noted above, Millennium had already informed the Town that corrective work on the ONT issues was ongoing.

53. Millennium disputed any “default” with respect to the ONT issues, and, expressly reserving its objection to the Town’s assertion of “default,” notified the Town that to the extent any “default” were deemed to have occurred, the cure of such default had been promptly commenced as set forth in Section 18.2 of the Contract.

54. In communications dated October 24, 2014, the Town advised that it intends to withhold or deduct \$252,900 in ONT-related payments. Of these amounts, however, \$219,900.00 relate to charges for ONT materials that have been purchased and are presently installed in homes or are being stored on-site in Leverett (Items Nos. 403, 404, 405, and 406 on Payment Applications Nos. 12 and 13).

55. The Town previously raised issues with respect to ONT installation – not materials. ONT installation issues have been appropriately addressed by Millennium, and corrective work by the subcontractor is ongoing at no cost to the Town. As stated in correspondence from Millennium to the Town dated September 25, 2014, Millennium has acknowledged the Town’s dispute regarding subcontractor ONT installation and offered to withhold approximately \$32,000 in installation costs (Item No. 407 on the Payment Applications) until completion of corrective work by the subcontractor.

56. The Town’s use of the installation issue as the basis to withhold payment of \$219,900.00 for ONT materials is without justification and is a material breach of the Contract.

F. Town’s Lack of Good Faith

57. In addition to its inaccurate claims regarding ONT issues, the Town has refused to make payments due and owing for work performed under the Contract, on the purported basis of

ad hoc “inspections” or observations by individual members of the Broadband Committee. Such “inspections” have been conducted by individual members of the Broadband Committee without authority or notice to Millennium.

58. Whereas Millennium has made repeated overtures to discuss issues with the Town as they arise and work in a cooperative manner to resolve disputes, the Town has rebuffed Millennium’s efforts. Instead of notifying Millennium of issues as they arise on the Project, the Town’s practice has been to issue notices of purported “breach” and “default” and to make unsupported accusations regarding Millennium’s work in written communications to Millennium’s surety.

59. Despite the fact that installation work is ongoing and has not been presented for final testing or acceptance, the Town has continually raised minor, limited issues as a pretext for withholding significant amounts due under the Contract for work performed and materials supplied.

60. The Town on October 24, 2014 advised Millennium that any future submission of change order requests would result in withholding of payment for work already performed and materials already supplied. Specifically, the Town advised:

If change order requests are submitted in the future, then current and past charges on the affected lines of the invoice will be considered in dispute and withheld until a determination on the change order is finalized.

61. The Town’s withholding or deducting of payments for work that is within the scope of the original Contract simply because Millennium requests additional payment, through a change order, for additional work that is outside the original scope of the Contract, is not permitted under the Contract. Millennium is entitled to request change orders for such additional

work pursuant to Section 9 of the Contract, and the Broadband Committee is obligated to review such requests in good faith.

62. The Town's determination to dispute and withhold past payments any time a change order is requested is designed to coerce Millennium to accept a lower fee or to perform additional work without payment.

63. The Town's conduct demonstrates a lack of good faith and fair dealing and has deprived Millennium of the benefits of the Contract with the Town.

64. The Town's unjustified failure and refusal to pay Millennium amounts due is interfering with Millennium's contractual relationships with its subcontractors and suppliers. The terms of Millennium's subcontracts with subcontractors provide that subcontractors will be paid upon Millennium's receipt of payment from the Town. Accordingly, the Town's refusal to pay amounts due has the effect of depriving subcontractors of payment for work performed.

65. The Town's unjustified failure and refusal to pay Millennium is placing the future of the Project in jeopardy.

66. Millennium served the Town with a Notice of Default dated October 9, 2014 based on the Town's unjustified failure and refusal to pay amounts due and owing under the Contract, as well as other breaches.

67. The 15-day period for the Town's cure of the default has expired, and the Town has failed to cure the default.

COUNT I (BREACH OF CONTRACT)

68. Millennium repeats and restates the allegations set forth in Paragraphs 1-67 as if fully set forth in herein.

69. Millennium has performed its obligations as ordered and directed by the Town and is entitled to payment for work performed and materials supplied under the Contract.

70. Millennium has been required to perform additional work and incur additional costs outside the original scope of the Contract.

71. As a result of the Town's acts and omissions, Millennium has been unable to perform the work in the planned sequence and in accordance with the approved schedule.

72. As a result, Millennium was forced to add staff, perform work out of sequence, utilize overtime and incur added cost due to delays and disruptions for which the Town is responsible.

73. Millennium is entitled to payment for added staff, extended field and general conditions costs and other costs.

74. During the course of the Project, the Town has required substantial changes to the work, causing Millennium to incur additional costs.

75. The Town has breached the Contract by failing to pay for additional work.

76. The Town has without justification failed and refused to pay Millennium amounts due and owing under the Contract and to make equitable adjustments to the Contract price, causing Millennium to sustain damages of not less than \$1,008,375.00.

**COUNT II
(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)**

77. Millennium repeats and restates the allegations set forth in Paragraphs 1-76 as if fully set forth in herein.

78. In every contract there is implied a duty of good faith and fair dealing.

79. The Town by its conduct has breached its duty of good faith and fair dealing implied in the Contract, causing Millennium to sustain damages.

80. The Town's conduct has prevented Millennium from enjoying the benefits of the Contract.

**COUNT III
(QUANTUM MERUIT AND UNJUST ENRICHMENT)**

81. Millennium repeats and restates the allegations set forth in Paragraphs 1-80 as if fully set forth in herein.

82. Millennium has performed work and supplied materials pursuant to the Contract.

83. As a result of owner-caused delays, unforeseen and differing site conditions, and owner-requested changes, Millennium has been required to perform additional work and incur additional costs outside the original scope of the Contract.

84. Millennium has sought equitable adjustment for such additional work through proposed Change Orders 5-11.

85. The Town without justification has denied any increase in Contract price as requested in the proposed Change Orders 5-11.

86. Millennium is proceeding with the work set forth in proposed Change Orders 5-11 under protest.

87. The additional work performed by Millennium and additional costs incurred by Millennium have conferred and will confer a measurable benefit upon the Town for which Millennium reasonably expects compensation, and the Town has accepted such benefit with the knowledge that Millennium expects compensation.

88. The Town has been unjustly enriched by its failure and refusal to pay for work performed and materials supplied, and its failure and refusal to adjust the Contract price equitably to compensate Millennium for additional work performed and additional costs incurred.

89. The Town's wrongful conduct in refusing to pay amounts due and owing for work performed and materials supplied and to make equitable adjustments to the Contract price has caused Millennium to suffer damages of not less than \$1,008,375.00.

**COUNT IV
(BREACH OF WARRANTY)**

90. Millennium repeats and restates the allegations set forth in Paragraphs 1-89 as if fully set forth in herein.

91. When it issued contract documents during the bid process, the Town expressly and impliedly warranted that the schedule data and specifications were accurate, complete, constructible, and sufficient to satisfactorily complete the Project.

92. Millennium relied on the Town's warranties when it prepared and submitted its bid in response to the Town's Invitation for Bids.

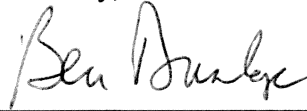
93. The Town breached these warranties, directly and proximately causing Millennium to incur damages to adequately address errors and omissions contained in the contract documents.

WHEREFORE, based on the foregoing, Millennium requests the following relief:

1. A ruling that the Town's failure and refusal to pay Millennium amounts due is a breach of the Contract;
2. A ruling that the Town's denial of Proposed Change Orders is improper, and that Millennium is entitled to equitable adjustment of the Contract price and extension of the time for performance;
3. A ruling that the Town shall engage at its own expense a mutually agreed-upon representative to inspect and evaluate the work in accordance with Section 11.1 of the Contract;

4. An award of damages of not less than \$1,008,375.00, plus such additional damages as may be sustained by Millennium, plus interest, attorney's fees, and costs; and
5. Such other relief as the arbitrator shall deem fair and just.

Respectfully submitted,
MILLENNIUM COMMUNICATIONS
GROUP, INC.,
By its Attorney,



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LeClairRyan, *A Professional Corporation*
One International Place, 11th Floor
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Dated: November 21, 2014

EXHIBIT A

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT ("Agreement") is made this 27th day of June 2013, ("Effective Date") between the Town of Leverett ("the Town" or "Owner" or "MLP"), and Millenium Communications Group, Inc. ("Contractor").

Owner and Contractor agree as set forth below.

1. SCOPE OF WORK

Contractor shall perform the Work and provide the services required by the Contract Documents to design, furnish and install a Fiber to the Home (FTTH) system for the Town of Leverett (the "Work"), as more particularly described in the Town of Leverett FIBER OPTIC TO THE HOME INSTALLATION, SPlicing, TERMINATION, TESTING, AND MAINTENANCE SERVICES Invitation for Bids dated May 15, 2013 (the "IFB") and its Exhibits A through F.

2. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and the following listed documents, which are attached hereto and incorporated herein by this reference:

Town of Leverett FIBER OPTIC TO THE HOME INSTALLATION, SPlicing, TERMINATION, TESTING, AND MAINTENANCE SERVICES Invitation for Bids dated May 15, 2013.

Exhibit A Bid Form, Bid Deposit Form and Performance Bond Form

Exhibit B Specifications and Standards

Exhibit C Route Maps

Exhibit D Aerial Construction Typical Sheets and Underground Construction Typical Sheets

Exhibit E Prevailing Wage Rates

Exhibit F Maintenance

3. TIME OF COMMENCEMENT AND FINAL COMPLETION

The Work to be performed and services to be furnished under this Agreement shall be in accordance with the IFB and Exhibits, subject to authorized adjustments of time as provided herein.

"Final Completion" is defined as the stage in progress where, in the reasonable discretion of the Owner, the Work has been 100% completed, including satisfactory completion of all punch list items, in accordance with the Contract Documents, and when Owner can occupy and use the Work for its intended use. Final Completion shall be achieved no later than 18 months from the date Owner issues the Notice to Proceed to Contractor. Final Completion shall include Contractor's coordination with Owner's Network Operator and Internet Services Provider (ISP) for configuration and provisioning of Active Ethernet equipment and network turn-up.

4. PRICE

Owner agrees to pay Contractor the prices set forth in the Bid Form of the IFB, at the times and in the manner set forth herein.

5. PAYMENTS

- 5.1 Contractor shall, within seven (7) days after the first day of each month, submit to Owner an invoice and lien waivers for Work performed in the preceding month. Payments shall be made by Owner no later than thirty (30) days from the date of the invoice and all lien waivers.
- 5.2 The prices set out in the Bid Form of the IFB do not include federal manufacturers' and retailers' excise tax, and any federal, state or local taxes of a similar nature, all of which are the responsibility of Contractor.
- 5.3 Notwithstanding any provision contained in this Agreement to the contrary, Owner shall have the right in good faith to dispute any fees, charges, costs, expenses or payments for which it is invoiced by Contractor. In the event Owner disputes any invoice (or portion thereof) received from Contractor, Owner shall pay within thirty (30) days that portion of the invoice that is undisputed. Owner shall have the right to withhold payment of any disputed amount, provided that Owner gives written notice to Contractor of the amount so disputed and the reason for the dispute within thirty (30) days after the receipt of the invoice. All issues of payment dispute shall be resolved in accordance with the procedures set forth in Section 23 of this Agreement.

6. TECHNICAL AND PERFORMANCE SPECIFICATIONS

The technical specifications applicable to the Work are attached hereto including: Exhibit B, Specifications and Standards; Exhibit C, Maps; Exhibit D, Aerial Construction Typical Sheets and Underground Construction Typical Sheets; Exhibit E, Prevailing wage rates; and Exhibit F, Maintenance; as well as specifications stated in the IFB. The Specifications, including changes to documentation and special applications, may be amended from time to time by a mutually acceptable written agreement between Owner and Contractor.

7. RISK OF LOSS

Contractor shall bear risk of loss for all Work prior to delivery to Owner and acceptance by Owner as provided in this Agreement, provided, however, that Contractor shall not be responsible for any such loss due to the actions, omissions or willful misconduct of Owner which causes any such loss. Title and ownership of the Work shall pass to Owner upon such acceptance, subject, however, to receipt of payment by Contractor. Contractor warrants that Owner shall acquire good and clear title to the Work being purchased, free and clear of all liens or encumbrances whatsoever.

8. PROSECUTION OF WORK

- 8.1 Contractor shall furnish all labor, supervision, tools, equipment, materials and supplies necessary for the performance of this Agreement in a proper, efficient and workmanlike manner. Contractor shall prosecute the Work undertaken in a prompt and diligent manner, so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the Work of any other contractor. Any materials that are to be furnished by Contractor or Owner hereunder shall be furnished in sufficient time to enable Contractor to perform and complete its Work within the time or times provided for in this Agreement. Contractor shall provide sufficient notice to Owner of its time requirements, in order to allow Owner to provide any Owner-supplied materials in a timely manner. Upon written request, Contractor shall furnish to Owner such evidence as Owner may reasonably require relating to Contractor's ability to fully perform this Agreement in the manner and within the time specified herein.
- 8.2 Contractor shall keep available, during the progress of the Work, a competent manager ("Project Manager") who shall be the authorized representative of Contractor and subcontractors. Directions and communications to the Project Manager from Owner in connection with the Work shall be treated as directions and communications to Contractor. Owner shall have the right, reasonably exercised, to request replacement of the Project Manager for incompetence or other material failure to prosecute the Work in accordance with this Agreement.

9. CHANGES

Owner may, at any time by written agreement between Owner and Contractor ("Change Order"), make changes in, additions to or deletions from the Work, and Contractor shall promptly proceed with the performance of the Work as so changed. The price and time for performance shall be, by mutual agreement, equitably adjusted to compensate for increased or decreased costs of performance or time for performance resulting from such changes, additions or deletions.

10. EXTENSION OF TIME

Contractor shall not be liable, in whole or in part, for non-performance or delay in performance of any of its obligations set forth in this Agreement due to fire, flood, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes (collectively referred to as "Force Majeure").

Contractor shall be entitled to request a Change Order, equitably adjusting the time for performance of this Agreement by a mutually agreed upon number of days, as a result of such Force Majeure events.

11. ACCEPTANCE

- 11.1 Contractor shall perform its standard tests, showing that the Work meets the applicable performance parameters set out in the Specifications. Owner shall have the right to witness such tests.

Contractor shall notify Owner when the Work is ready for testing ("Performance Testing") and acceptance by Owner. Performance Testing for the Work shall commence within two (2) days of Owner's receipt of such notification. Acceptance of the Work, subject to such Performance Testing, shall be deemed to take place thirty (30) business days after completion of Performance Testing and receipt of the test results by Owner, and completion of coordination with Network Operator and ISP for network configuration and provisioning, unless Owner notifies Contractor in writing of any deficiencies before such thirty (30) business day period expires.

Owner, at its cost, may engage a separate agency to do performance tests on a subset of completed fiber connections. If test results differ significantly from test results provided by the Contractor, Contractor shall undertake a full retest of the network at Contractor's expense, performed by Owner's agency.

- 11.2 Should there be a failure during the test period to perform in accordance with the Specifications and Contractor's warranty, Owner shall notify Contractor of the failure in writing, containing such reasonable details as are necessary to inform Contractor of the deficiency. Contractor shall then have fifteen (15) days, unless Owner and Contractor otherwise agree, to cure such failure.
- 11.3 Owner may accept the Work prior to the test period if Owner utilizes the Work for data transmission or gives Contractor a written notice of acceptance and waiver of the test period. Owner's acceptance of the Work prior to the test period shall not be construed as a waiver of any of Owner's rights under this Agreement.
- 11.4 Contractor shall be entitled to full payment for Work completed upon completion of acceptance testing for the Work, as defined in the IFB, and provided that satisfactory evidence is provided to Owner that payments for all materials and subcontractors for that portion of the Work have been paid, all in accordance with Sections 5, 7, and 18 herein.

12. WARRANTIES

- 12.1 Warranty

Contractor warrants the Work to be of professional workmanship and materials and in accordance with law and the Specifications for a period of one (1) year from the date of completion and acceptance of the Work. All equipment and product warranties for a longer time shall be provided to the Town intact.

12.2 Remedies for Breach of Warranties

Owner's sole and exclusive remedy and Contractor's sole and exclusive maximum liability under the warranties contained in Section 12.1 shall be, at the sole option of Contractor, either to promptly repair (with new parts), replace, or (upon Owner's approval) credit Owner's account for any defective portion of the Work during the warranty period, provided that:

- a. Contractor is notified in writing after discovery by Owner that the Work has failed to conform with law or the Specifications, such writing to include an explanation of any such alleged defects; and
- b. Contractor's examination of the Work confirms that the alleged defect exists.
- c. Contractor shall use best efforts to promptly repair or replace all such defective Work, provided that Contractor shall repair or replace such defective Work in an expeditious manner, but no later than within thirty (30) days following its receipt of notice from Owner, unless circumstances of Force Majeure dictate a longer period, in which event the parties shall in good faith mutually agree in writing upon such longer period. All removed defective material shall become the sole property of Contractor.
- d. In the event defective Work causes a service-affecting outage, Owner shall notify Contractor (at a number and location to be provided upon Final Acceptance), and shall inform Contractor that an immediate response is required. If Contractor is not able to be reached or cannot provide immediate response, then Owner shall be able to repair such defective Work at Contractor's expense, and shall grant Contractor access to pertinent information regarding the outage, including information related to subcontractors. Reasonable efforts shall be made by Owner to notify Contractor and to apprise Contractor, in advance, of estimated repair costs. Owner shall use reasonable efforts, under the urgent circumstance of a service-affecting outage, to minimize repair costs.
- e. In the event Contractor responds to a service-affecting outage, and that outage was not caused by defective Work, Owner shall reimburse Contractor for its costs associated with responding to the outage at the rates specified in the Bid Form of the IFB.

12.3 Third Party Warranties

In addition to the foregoing warranties, Contractor hereby assigns to Owner, and Owner shall have the benefit of, any and all subcontractors' and suppliers' warranties and representations with respect to the Work provided to Owner. Contractor agrees that, in agreements with its subcontractors and suppliers, Contractor shall require that such parties: (i) consent to the assignment of such warranties and representations to Owner, and (ii) agree that such warranties and representations are enforceable by Owner in its own name.

THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE WORK, AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES.

13. INSURANCE AND INDEMNIFICATION

13.1 Insurance Generally.

13.1.1 The Contractor shall take out and maintain the insurance coverages listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

13.1.2 All policies shall be written on an occurrence basis and be issued by companies authorized to write that type of insurance under the laws of the Commonwealth and rated in Best's Insurance Guide (or any successor thereto or replacement thereof) as having a general policy holder rating of "A" or better and a financial rating of at least "9" or otherwise acceptable to the Town and/or the MLP.

13.1.3 Contractor shall submit three originals of each certificate of insurance, acceptable to the Town, simultaneously with the execution of this Contract. Certificates shall show the Town and the MLP as an additional insured as to all policies of liability insurance and shall state that Contractor has paid all premiums and that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the Town. Contractor shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Town shall at all times possess certificates indicating current coverage. Certificates shall indicate that the contractual liability coverage, and Contractor's Protective Liability coverage is in force. Certificates shall include specific acknowledgment that the following coverages are included in the policies:

- Contractual liability
- Contractor's protective liability
- Owner as Additional Insured by form CG2010 (11/85 ed.) to the general liability
- Owner as Additional Insured to automobile liability, umbrella liability, and pollution liability
- General Liability is endorsed with CG2404, Waiver of Subrogation, in favor of the Town and MLP

-Builder's Risk or Installation Floater includes Town, MLP, Contractor and subcontractors of any tier as Named Insureds. Builder's Risk or Installation floater is on an All Risk basis including earthquake and flood.

13.1.4 The Contractor shall file one certified copy of all policies with the Town within sixty days after Contract award. If the Town or the MLP is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall indemnify, hold harmless, defend with MLP counsel, and be responsible for all costs and damages to the Town or MLP attributable thereto.

13.1.5 Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Town and/or the MLP at least thirty days prior to the effective date thereof, which shall be expressed in said notice

13.2 Contractor's Commercial General Liability and Umbrella Liability.

13.2.1 Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project.

CGL insurance shall be written on ISO occurrence form and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract.

13.2.2 This policy shall include coverage relating to explosion, collapse, and underground property damage.

13.2.3 This policy shall include contractual liability coverage.

13.2.4 The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion.

13.2.5 Any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted. Contractor shall obtain any Railroad Protective Liability policy that is required by railroad

13.2.6 This policy shall include endorsement CG 20 10 or a substitute providing equivalent coverage), including *Town and MLP as Additional Insureds* and *CG2404 Waiver of Subrogation in Favor of Town and MLP*.

13.3 Commercial Automobile and Umbrella Liability.

13.3.1 The Contractor shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$5,000,000 each accident. Such insurance shall cover liability arising out of any owned, non-owned, and hired vehicles.

13.3.2 The policy shall include a CA9948 Pollution Endorsement and the Motor Carrier Act endorsement (MCS 90).

13.4 Pollution Liability.

The Contractor shall provide coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The Town and the MLP shall be named as an Additional Insured and coverage must be on an occurrence basis. The amount of coverage shall be \$1,000,000 per occurrence and \$3,000,000 in the aggregate. If coverage as required in this paragraph is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 3 years beginning from the time that work under the contract is completed.

13.5 Workers Compensation and employers liability insurance.

The Contractor shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended. Contractor shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Contractor waives all rights against Owner and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella liability insurance obtained by Contractor pursuant to this agreement. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

13.6 Builder's Risk/ Installation Floater/Stored Materials.

- 13.6.1 The Contractor shall provide coverage against loss or damage on all Work included in this Contract in an amount equal to the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Designer's and Contractor's services and expenses required as a result of such insured loss. This policy and/or installation floater shall indicate if Stored Materials coverage is provided as required below.
- 13.6.2 When Work will be completed on existing buildings owned by the Town, the Contractor shall provide an installation floater, in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. This policy and/or installation floater shall indicate if Stored Materials coverage is provided as required below.
- 13.6.3 The Contractor shall maintain insurance on delivered and/or stored material designated to be incorporated in the Work against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at some approved off Site location shall be forthwith replaced by the Contractor at no expense to the Town or the MLP.
- 13.6.4 The policy or policies shall specifically state that they are for the benefit of and payable to the Town, MLP, the Contractor, and all persons furnishing labor or labor and materials for the Contract Work, as their interests may appear. The policy or policies shall list the Town and the MLP, the Contractor, and Subcontractors of any tier as named insureds.
-
- 13.6.5 Coverage shall include any costs for work performed by the Designer or any consultant as the result of a loss experienced during the term of this Contract.

13.6.6 Coverage shall include temporary occupancy and waiver of subrogation.

13.7 Umbrella Coverage.

The Contractor shall provide Umbrella Coverage in form at least as broad as primary coverages required by Sections 2, 3 and 5 of this Article in the following amount:

Umbrella Coverage: \$5,000,000 per occurrence

13.8 Indemnification

13.8.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with MLP counsel) and hold harmless the Town and MLP and their officers, agents, divisions, agencies, employees, representatives, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to court costs and attorneys' and experts' fees, arising out of or resulting from the performance of the Work, including but not limited to those arising or resulting from:

- labor performed or furnished and/or materials used or employed in the performance of the Work;

- violations by Contractor, any Subcontractor, or by any person directly or indirectly employed or used by any of them in the performance of the Work or anyone for whose acts any of them may be liable (Contractor, subcontractor and all such persons herein collectively called "Contractor's Personnel") of any Laws;

- violations of any provision of this Contract by any of Contractor's Personnel;

- injuries to any persons or damage to any property in connection with the Work;

- any act, omission, or neglect of Contractor's Personnel.

13.8.2 The Contractor shall be obligated as provided above, regardless of whether or not such claims, damages, losses and/or expenses, are caused in whole or in part by the actions or inactions of a party indemnified hereunder. In any and all claims by Contractor's Personnel against parties indemnified hereunder, the Contractor's indemnification obligation set forth above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Article.

13.10 Survival.

The provisions of this Article 13 are intended to survive Final Acceptance and/or any termination of this Contract.

13.11 NO SPECIAL DAMAGES

IN NO EVENT SHALL OWNER BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOST PROFITS, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING FROM OR RELATED TO THIS AGREEMENT.

14. POSSESSION PRIOR TO COMPLETION

Whenever it may be useful or necessary for Owner to do so, Owner shall be permitted to occupy and/or use any portion of the Work which has been either partially or fully completed by Contractor before final inspection and acceptance thereof by Owner, but such use and/or occupation shall not relieve Contractor of its obligation to make good, at its own expense, any warranty relating to materials and/or workmanship. Work shall be deemed accepted upon such occupancy or use. If they have not already begun, all warranties shall begin upon such occupancy or use.

15. LIENS AND CLAIMS

Contractor shall, as and when requested, furnish lien waivers and other evidence satisfactory to Owner that all amounts due for labor and material furnished Contractor in connection with performance of this Agreement have been paid, including union, health, welfare and pension fund payments and payroll taxes. Such evidence shall be furnished in such form and manner as requested by Owner. Contractor, when requested, shall furnish to Owner releases of bond rights and lien rights by persons who have furnished labor, material or other things in the performance of the Work. Contractor shall deliver the Work free from all claims, encumbrances and liens, excepting only those that may arise out of failure of undisputed payment on the part of Owner.

16. SITE CONDITIONS

16.1 Contractor has inspected the site where the Work is to be performed, is familiar with the conditions of the site and the local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and agrees that no claim shall be made whatsoever for costs, damages or expenses as a result of the conditions of the site.

16.3 In the event Contractor encounters toxic or hazardous materials in performance of this Agreement which are not introduced to the site directly by Contractor and could not have been foreseen under the conditions set forth in paragraph 16.1, any resulting delays shall be considered to be beyond Contractor's control and without Contractor's fault, and such materials shall be removed or otherwise dealt with by Owner or by the appropriate government agency, organization or party. Contractor shall have no obligation, responsibility or liability with respect to such materials.

17. BONDING

Contractor shall furnish Performance and Payment Bonds to Owner in an amount equal to the full price for the Work. Such bond shall be in a form and with a surety satisfactory to Owner. Premiums for such bonds shall be paid by Contractor.

13. DEFAULT

- 13.1 Subject to the expiration of all applicable cure periods as provided herein, and unless otherwise excused by reason of an event of Force Majeure, an "Event of Default" shall mean a material breach of this Agreement by Contractor as to any of the following: (i) Contractor has not delivered the Work that has been ordered by Owner in accordance with this Agreement; (ii) the Work proves incapable of meeting the criteria set forth in the Specifications; (iii) the Work is not compatible, as described in the Specifications; (iv) Contractor is in default of any other material obligation to be performed by Contractor pursuant to this Agreement; or (v) Contractor has become insolvent under the United States bankruptcy laws.
- 13.2 If an Event of Default occurs, then Owner shall notify Contractor in writing (the "Default Notice"), specifying the reasons for such alleged default and advising Contractor that, unless such default is cured within thirty (30) days following the receipt by Contractor of such Default Notice, Contractor shall be in default under this Agreement; provided, however, that if such default cannot reasonably be cured within thirty (30) days following receipt by Contractor of such Default Notice, Contractor shall have an additional reasonable period of time in which to cure such default, so long as Contractor promptly commences, and in good faith diligently continues to pursue, the cure of such default. Such occurrence shall not be the basis for a Change Order or other adjustment of the Substantial Completion date.
- 13.3 Unless otherwise mutually agreed upon by Owner and Contractor in writing and set forth in an amendment to this Agreement, if an Event of Default occurs and is not excused or cured as provided in this Agreement, then Contractor shall be liable for all direct damages resulting from such default. Owner agrees that the payment of direct damages shall be the sole and exclusive remedy of Owner for an Event of Default; and that upon such payment, Contractor shall be fully released from any and all liability under this Agreement, and this Agreement thereupon shall terminate and be of no further force or effect.
- 13.4 Should Owner be in default of its obligations hereunder, Contractor shall issue a written notice of default, providing therein for a fifteen (15) day period in which Owner shall have an opportunity to cure, provided that cure is possible and feasible. If, after opportunity to cure, or if cure is not possible or feasible and the default remains, Contractor may either suspend performance or terminate this Agreement, and may exercise any available remedy either in equity or at law. ~~IN NO EVENT, HOWEVER, WILL OWNER BE~~ ~~LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR~~ ~~PUNITIVE DAMAGES, WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT~~ ~~OF TORT (INCLUDING STRICT LIABILITY) CONTRACT, WARRANTY OR~~ ~~OTHERWISE.~~

19. INDEPENDENT CONTRACTOR

All actions taken by either party under this Agreement shall be performed as an independent contractor and not as an agent of the other, and no persons furnished or employed by the performing party shall be considered the employees or agents of the other. Neither party shall have the authority to enter into any agreement purporting to bind the other without the other's written authorization.

20. ARBITRATION

- 20.1 All claims, disputes and other matters in question arising out of or relating to this Agreement or the breach thereof shall be decided by arbitration in Greenfield, MA in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually agree in writing to the contrary. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbiters shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 20.2 Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 20.3 If other persons' or parties' presence is required for relief to be awarded in the arbitration, Contractor and Owner shall attempt to include such parties in the arbitration. Failing that, either party may request that the arbiters release the parties from their obligation to arbitrate.

21. PUBLICITY

Each party shall submit to the other a proposed copy of all advertising, sales promotion, press releases, and any other publicity matters relating to this Agreement (collectively "Advertising") wherein the name, trademark, code, specifications or service mark of the other party or its affiliates is mentioned; and neither party shall publish or use such Advertising without the other's prior written approval. Such approval shall be granted as promptly as possible (usually within ten (10) days), and shall not be unreasonably withheld.

22. COMPLIANCE WITH LAW

Both parties agree to fully comply with all laws, ordinances and regulations applicable to them in their performance of this Agreement.

23. ASSIGNMENT

Neither party may assign, transfer, convey or otherwise dispose of (collectively, "Transfer") any rights, title, or interest in or to this Agreement, without the prior written consent of the other party, to an affiliate or entity or person that acquires or merges with the assignor. All other Transfers require the prior written consent of the other party.

24. GOVERNING LAW

The construction, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except for its rules with respect to the choice or conflict of laws, and litigated, if at all, only in Massachusetts Courts in Franklin County.

25. SEVERABILITY

If this Agreement contains any provision found to be unlawful or invalid, then such provision shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

26. WAIVER

A failure of either party to exercise any right provided for in this Agreement shall not be deemed to be a waiver of the same or any other right hereunder. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.

27. CAPTIONS

Section headings are inserted herein for convenience only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

28. NOTICES

All notices shall be in writing, addressed to the parties at the addresses set out in the beginning of this Agreement, unless either party notifies the other of a change in its address. Notices shall be considered as delivered on the third (3rd) business day after the date of mailing if sent certified mail, or when received in all other cases, including facsimile, telecopy or other printed electronic medium or personal delivery.

29. ENTIRE AGREEMENT

This Agreement, including the IFB and Exhibits referenced and attached hereto, comprises all the terms, conditions and agreements of the parties with respect to the subject matter herein; and except as expressly provided herein, this Agreement may not be altered or amended except in writing, signed by authorized representatives of each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized representatives on the day and year first written above.

By: [Signature]

By: [Signature]

Name: Richard P. Brazee

Name: Ronald M. Cassel

Title: Chair, Selectboard

Title: CEO

Date: June 27, 2013

Date: June 25, 2013

Exhibit G - Construction Agreement
Town of Leverett Fiber Optic Project

[Signature] 10/25/13
JULIE BASIL
Notary Public of New Jersey
My Commission Expires April 4, 2016