

Town of Blowing Rock

Request for Council Action

FROM: Ed Evans – Town Manager
SUBJECT: Ridgeline, Inc. Fiber Optic Agreement
TO: Town Council
DATE: August 8, 2017
REQUESTED BY: Ed Evans – Town Manager

BACKGROUND:

Ridgeline, Inc., a North Carolina limited liability company and subsidiary of Blue Ridge Energy has run fiber to our buildings for broadband interconnection in order to consolidate phone and Internet services. This is the pipeline over which Skybest broadband service will operate and is the prelude to our upcoming transition from AT&T to Voice Over Internet Protocol telephone and Internet services. This is our first step in reducing expenses for our telephone service and Internet service while improving and modernizing our system performance. This transition to Ridgeline, Inc. service will replace our Charter services and numerous accounts with AT&T, resulting in overall savings of approximately **\$20,000 per year**.

This contract is for a specified period of five years at \$6,000 per year, plus a one-time fee of \$4,800 for splicing the fiber terminations. These fees are budgeted in Capital Expenditures and General Fund expenditures for FY2017-18.

STAFF RECOMMENDATIONS:

Council approve of the attached contract with Ridgeline, Inc. This contract is a standard Ridgeline, Inc. contract and has been reviewed by our attorney, Allen Moseley.

COUNCIL ACTION:

FIBER OPTIC LICENSE AGREEMENT

THIS FIBER OPTIC LICENSE AGREEMENT (“Agreement”), made this ____ day of _____, 2017 (“Effective Date”), between RidgeLink, LLC, a North Carolina limited liability company (“Licensor”), having an office 1216 Blowing Rock Blvd. NE, Lenoir, North Carolina, and the Town of Blowing Rock (“Licensee”) having an office at 1036 Main Street, Blowing Rock, NC. Licensee and Licensor are each referred to herein as a “Party” and collectively as the “Parties”.

BACKGROUND

WHEREAS Licensor will, in accordance with the technical and material specifications detailed in the attached exhibits, operate and maintain the constructed fiber optic facilities along the “Route” described in Article 2.1;

WHEREAS, Licensor is willing to grant to Licensee a Fiber Optic License for its exclusive use in certain fiber optical strands along the Route in accordance with the terms and conditions of this Agreement; and

WHEREAS, Licensee offers high speed Internet access service and may offer other services to residential and commercial customers.

THEREFORE, in consideration of the above recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

Unless otherwise defined herein, the terms used in this Agreement will have their normal or customary meanings. In addition, for the purpose of this Agreement, the following terms will have the meanings set forth below:

- | | |
|--|--|
| Acceptance/Accept: | (i) Written notification issued to the Licensor from the Licensee stating that a Cable is in conformance with this Agreement and accepting the Cable, or (ii) presumed Acceptance as described in Article 4.2 |
| Cable: | A cable containing Licensee Fibers, the fibers contained therein, and the associated splicing connections, boxes, vaults, and conduits installed and maintained by the Licensor as applicable, along the Route, as described in Article 2.1. The term Cable could apply to any one of several Cables containing Licensee Fibers. |
| Conditional Acceptance/
Conditionally Accept: | Written notification issued by the Licensee, stating its intent to begin using a Cable even though such Cable is not in conformance with this Agreement, with the express condition that all |

deficiencies impeding conformance will be corrected by the Licensor.

Demarcation Point:	A designated handhole or other suitable interface enclosure at which each Party's obligations with respect to a Cable will separate under this Agreement.
Licensee Fibers:	The optical fibers in which the Licensor is granting the Licensee this Lease in accordance with the terms and conditions of this Agreement, as specified in Article 2.1.
Licensor's Network:	The fiber optic network operated and maintained by Licensor, which may be expanded from time to time at Licensor's sole discretion, a portion of which constitutes the Route, as described in Article 2.1, within which the Licensee's Fibers will be placed.
Fiber Optic License or "License":	An exclusive right to use designated Fibers as further described and upon the terms and conditions specified in this Agreement and its Exhibits.
Potential Service Affecting Condition:	Any deficiency that left unchecked and uncorrected could become a Service Affecting Condition.
Rights-of-Way ("ROW"):	Easements or other rights to use real property.
Service Affecting Condition:	Any failure interfering with a Cable's ability to carry telecommunications.

ARTICLE 2. RIGHTS IN FIBER AND PAYMENT

2.1 **License Grant.** Licensor conveys to Licensee a License in six (6) fiber optic strands (three pair), hereinafter the "Licensee Fibers," extending over that portion of the Licensor's Network between the Water Plant located at 6775 Valley Blvd., Blowing Rock, NC; the Waste Water Treatment Plant located at 7190 Valley Blvd., Blowing Rock, NC; the Blowing Rock Pool located at 173 Lakeside Drive, Blowing Rock, NC and extending to Town Hall located at 1036 Main Street, Blowing Rock, NC. Licensor also conveys to Licensee a License in (2) additional fiber optic strands, (4) fiber optic strands total between Town Hall and the Blowing Rock Police Department. By written amendment to this Agreement, the Parties may agree to increase the number of Licensee Fibers subject to this License, extend the Route, add other Demarcation Points, or grant more licenses subject to the terms hereof.

- 2.2 Licensee shall not have any rights to any portion of Licensor's legal and equitable rights, if any, under any leases, easements, right-of-way agreements, and any other land-use agreements of any kind or nature to the extent that any such rights are applicable to the Licensee's use of the Licensee Fibers and/or the real property on which the Licensee Fibers are located or any rights Licensor may have under any other agreements relating to Licensor's Network (collectively, "Underlying Agreements"). Licensee hereby acknowledges and agrees that it is not a third party beneficiary under any Underlying Agreement. The Parties agree that the License granted hereunder does not provide Licensee with fee ownership in the Licensee Fibers or any portion of Licensor's Network. In addition, Licensor grants Licensee the non-exclusive right to access and use the cable and the structures supporting the Licensee Fibers.
- 2.3 Licensee acknowledges that it has no title to and cannot in any way encumber the Licensee Fibers or the Licensor's Network, or any property that is the subject of this Agreement that is not owned by Licensee. If any property of Licensor or of any person to an Underlying Agreement becomes encumbered by any unauthorized liens, claims or other encumbrances as a result of any act or omission of the Licensee, Licensee shall: (i) within five (5) business days cause the lien to be discharged by posting a bond, paying the underlying debt or otherwise; and (ii) indemnify, defend and hold harmless Licensor and any third party owner under the Underlying Agreements from said encumbrance.
- 2.4. Licensor and Licensee each shall work together in good faith to prevent damage to each other's equipment and to each other's ability to provide services over the Network, as applicable. Licensee shall not use or permit any third party to use equipment, technologies, or methods of operation that interfere in any way with or adversely affect the Network, or Licensor's or other persons' use of the Network to transmit their own signals. Licensor shall not use or permit any third party to use equipment, technologies or methods of operation that interfere in any way with or adversely affect Licensee's use of the Network or Licensee Fibers to transmit signals.
- 2.5. Licensee agrees to pay Licensor a yearly fee of "\$6,000.00" per year (the "Yearly Fee") for the connections to the Water Treatment Plant, the Waste Water Plant and the Blowing Rock Pool. Licensee also agrees to pay a one-time make ready fee of \$4,800 for splicing at the three locations plus the additional two fiber strands between Town Hall and the Blowing Rock Police Department. Payments made to Licensor shall be made by company check to "RidgeLink, LLC" and shall be delivered to Licensor at the following address:

RidgeLink, LLC
c/o Accounts Receivable
P.O. Box 112
Lenoir, North Carolina 28645

The above address is subject to change from time to time upon written notice to Licensee.

- 2.6 For each Renewal Term, as specified in Article 7, Licensor and Licensee shall commence negotiations of a Yearly Renewal License Fee within a reasonable time prior to the expiration of the Initial Term or Renewal Term, as applicable. Notwithstanding Article 7, in the event a Renewal Term Licensee Fee is not agreed to by Licensor and Licensee

prior to the expiration of the Initial Term and Renewal Term (“Expiration Date”), as applicable, Licensor may terminate the Agreement upon at least ninety (90) days’ notice to Licensee on or after the Expiration Date (“Transition Period”). During this Transition Period, Licensee shall pay the yearly license fee in effect on the Expiration Date.

ARTICLE 3. FIBER CONNECTIONS

- 3.1 Licensor shall connect the Licensee Fibers at the Demarcation Point within mutually agreed Licensor splice enclosures. Licensee, at Licensee’s expense, will be responsible for securing easements and permits and providing cable construction from the Demarcation Point to its other fiber optic facilities or to those of its customers or end users, as applicable.

ARTICLE 4. TESTING AND ACCEPTANCE

- 4.1 Unless the Cable containing the Licensee Fibers along Route is constructed and the connections made at the Demarcation Point within sixty (60) days of the Effective Date, at which time the Licensee Fibers shall be deemed available for testing, the Parties agree to meet and exchange general construction milestone schedules showing important coordination dates within thirty (30) days from the Effective Date of this Agreement. Such schedules will include, at a minimum, anticipated Cable installation (if any), splicing, and accompanied inspection dates. On or about the date on which fibers are available for testing, the Licensor will provide to the Licensee notice of availability. The Licensee will complete its inspection and testing within ten (10) business days of receipt of the Licensor’s notice of availability. The standards set forth in Exhibit A shall govern acceptance.
- 4.2 The Licensee’s Acceptance of the Cable containing the Licensee Fibers or written notice of deficiencies will not be unreasonably withheld, conditioned or delayed. If the Licensee does not provide a written notice of Acceptance or does not provide a list of deficient items within thirty (30) days after the notice of availability, a Cable will conclusively be presumed to have been accepted by the Licensee .
- 4.3 In the event deficiencies are identified by either Party prior to Acceptance, the Licensee, at its option, may Conditionally Accept the Cable, and upon such Conditional Acceptance, the Licensor will correct any such deficiencies within thirty (30) days of being notified of such deficiencies, provided the hardware or other material needed to correct the deficiency is reasonably deliverable and/or installable within the thirty (30) day period. If not able to correct the deficiency(ies) within the thirty (30) day period, Licensor shall diligently work to correct the deficiency(ies) as soon thereafter as possible. Upon completion of correcting the Licensee Fibers and re-testing same, Licensor shall provide notice of availability for Licensee testing and the Parties shall follow the same procedures as provided in this Article 4 for accepting the Licensee Fibers. If Licensor is unable to correct the deficiencies within sixty (60) days of being notified of same by Licensee, either party may terminate this Agreement without liability to either party. Licensor shall refund any Yearly Fees paid by Licensee prior to such termination under this Section 4.3.

ARTICLE 5. FIBER MAINTENANCE

- 5.1 Licensors shall, during the Term of this Agreement, perform maintenance on the Cable in accordance with generally accepted industry standards and the standards set forth in Exhibit B. In the case of any conflict, the standards in Exhibit B shall apply. Such obligation to maintain shall include all routine and ordinary maintenance and repairs to the Demarcation Point within the designated handholes as well as emergency repairs to correct any failure, interruption, or impairment in the operation of the Cable.
- 5.2 If a Service Affecting Condition or Potential Service Affecting Condition with regard to a Cable is identified by either Party, the Licensor will repair the Cable in accordance with the time frames specified in Article 5.8 of this Agreement.
- 5.3 Restoration of a Cable and any emergency splicing of the affected fibers will be completed in a systematic and rotational manner with priority given to the “in operation” fibers within such Cable.
- 5.4 Reporting and resolution of maintenance issues will be handled by each Party’s network operations center (“NOC”). Addresses and telephone numbers for the Licensor NOC are listed in the attached Exhibit B.
- 5.5 Licensors’ performance of the maintenance obligations provided in this Article shall meet the standards in this Agreement and generally accepted industry standards. All required maintenance, repair or restoration on a Cable shall be at the expense of the Licensor, except such maintenance costs resulting directly from the negligent or wrongful acts of the Licensee in which case the Licensee shall pay the total costs of maintenance, repair or restoration caused by its negligent or wrongful acts.
 - 5.5.1 Licensor has the right to contract with affiliates and/or third parties for the installation, inspection, maintenance and repair of the Licensee Fibers and the Network. The use of affiliates and/or third parties shall not release Licensor from any of its obligations under this Agreement.
- 5.6 Licensor will notify the Licensee at least five (5) business days prior to any scheduled routine maintenance on a Cable. Any planned service outage will have a beginning and ending time and a scope of activities to occur during such planned service outage. Any scheduled routine maintenance that may result in a temporary degradation of service quality or outage shall generally be undertaken between the hours of 12:00 a.m. and 6:00 a.m. local time, unless another time frame is mutually coordinated and agreed to by both Parties.
- 5.7 Licensor agrees to routinely inspect the Cable to the extent necessary to fulfill Licensor’s responsibilities under this Agreement and to meet its responsibilities under applicable laws, rules, and regulations, if any. Any Service Affecting Condition or Potential Service Affecting Condition identified by the Licensee will be reported to the Licensor’s NOC.
- 5.8 Any deficiencies with a Cable identified by the Parties shall be addressed in the following manner:

- 5.8.1. **Service Affecting Condition.** Correction will commence immediately upon the Licensor becoming aware of such condition. Unless delayed by circumstances beyond its reasonable control, the Licensor shall have a maintenance employee(s) at the site requiring emergency maintenance within four (4) hours after becoming aware of an event requiring emergency maintenance. Corrections will be completed as soon as possible, but in any case within twenty-four (24) hours.
- 5.8.2. **Potential Service Affecting Condition.** Correction by the Licensor will commence as soon as reasonably possible upon the Licensor becoming aware of such condition. Corrections will be completed as soon as possible, but in any case within five (5) days. If the corrections are not completed within five (5) days, the Licensor must show that it is using commercially reasonable efforts to complete the corrections as soon as possible.
- 5.8.3. **Other Conditions.** Any deficiency not falling within the parameters of Article 5.8.1 and 5.8.2 will be corrected by the Licensor within thirty (30) days of becoming aware of such deficiency. If the corrections are not completed within thirty (30) days the Licensor must show that it is using commercially reasonable efforts to complete the corrections as soon as possible.

Each of the time periods specified above begins when the Licensor becomes aware of a deficiency in accordance with this Agreement and ends when the deficiency has been corrected in accordance with the specifications outlined herein.

- 5.9 Any work performed by either Party on the premises of the other Party will be performed while taking all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work, will adhere to the security procedures and policies of the other Party, and will not interfere with the operations of the other Party.

ARTICLE 6. RELOCATIONS

- 6.1 If Licensor intends to relocate a Cable, Licensor will give Licensee at least six (6) months prior notice of the proposed relocation, or, if Licensor is unable to give the Licensor six (6) months prior notice, Licensor will notify Licensee of the relocation promptly after Licensor first has knowledge of the need to relocate its Cable. Except as set forth below, Licensor will be responsible for all costs associated with the relocation, including the Licensee's cost to maintain or reestablish connections to the Licensee Fibers. In the event Licensee desires to relocate a Cable, Licensee may request such relocation, and if the relocation is agreed to by Licensor, the Licensee shall be responsible for the payment in advance of all costs of Licensor associated with such relocation.
- 6.2 If a regulatory agency or governmental authority or third party with legal authority to do so orders or threatens to order such relocation of the Route (e.g., through filing or threatening to file a condemnation suit or other exercise of eminent domain, nationalization, or expropriation) or, if necessary, the Licensor must take steps to abate

interference with or interruption of its Network or the Licensee Fibers, or an unreasonable risk thereof, due to the existence of physical conditions (e.g., soil subsidence, rockslides, seismic conditions, or other force majeure event), and the Licensor determines in good faith in its reasonable judgment that it is technically or economically infeasible to relocate or rebuild the Route or portion thereof or relocate a Demarcation Point to restore the continuity and reliability of the Licensee Fibers consistent with generally accepted industry standards, Licensor shall notify Licensee in a timely manner, providing a projected date by which Licensee must terminate use of the Licensee Fibers.. No further Yearly Fees shall be owed and all of Licensor's obligations hereunder shall be extinguished without any further liability under this Agreement with respect to the terminated Route.

ARTICLE 7. TERM

- 7.1 This Agreement will commence as of the Effective Date and continue for a period of five (5) years (the "Initial Term"). The Initial Term will be automatically extended for up to three (3) additional five (5) year periods (each a "Renewal Term") unless either Party provides written notice of termination at least three (3) months prior to the end of the Initial Term or any subsequent Renewal Term (the Initial Term and the Renewal Term(s) being sometimes collectively referred to herein as the "Term").

ARTICLE 8. WARRANTIES

- 8.1 Each Party represents and warrants: (i) in the case of Licensee, it is duly organized, validly existing, and in good standing under the laws of the State of North Carolina, and in the case of Licensor, it is duly organized and validly existing under the laws of the state of North Carolina; (ii) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement; (iii) it has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement; (iv) this Agreement constitutes a legal, valid, and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights, and general equitable principles; and (v) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body.
- 8.2 Licensor warrants that the Licensee Fibers shall meet or exceed the specifications set forth in Exhibit A and that the Cable has been installed or will be installed in accordance with generally acceptable industry standards and this Agreement. Licensor further warrants that the Cable will be maintained in accordance with Article 5.
- 8.3 The warranties and remedies set forth in this Agreement constitute the only warranties and remedies with respect to this Agreement. Such warranties are in lieu of all other warranties, written or oral, statutory, express or implied, including without limitation the warranty of merchantability and the warranty of fitness for a particular purpose or use.
- 8.4 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTY TO LICENSEE OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL

LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ROUTE, THE LICENSEE FIBERS, OR THE NETWORK, OR ANY DELIVERABLE OR CONSTRUCTION PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, LICENSOR DOES NOT WARRANT THAT THE CABLE OR LICENSEE 'S FIBERS OR LICENSEE 'S USE OF THE SAME WILL BE UNINTERRUPTED OR ERROR-FREE.

ARTICLE 9. LIMITATION OF LIABILITY

- 9.1 Neither Party will be liable to the other for any consequential, indirect, special, or punitive damages, or for lost revenues, or for lost opportunities arising out of or in connection with this Agreement, including without limitation, any transmission interruptions or problems or any interruption or degradation of service, whether occasioned by any construction, non-construction, relocation, repair, or maintenance performed by or failed to be performed by the other Party.
- 9.2 In no event shall either parties' liability to the other for the breach of this Agreement, or claims related to or connected in any way with this Agreement (other than with respect to third-party claims that are subject to indemnification), exceed, in the aggregate, the Yearly Fees paid prior to the breach of the Agreement.

ARTICLE 10. INSURANCE

- 10.1 Throughout the period during which this Agreement remains in effect, Licensee shall take out and maintain the following minimum insurance:
- 10.1.1 Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations under this License. If any employee is not subject to the workers' compensation laws of North Carolina, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to Tennessee's workers' compensation laws.
- 10.1.2 Public liability and property liability insurance covering all operations under this Agreement with limits for bodily injury or death of not less than \$1 million for each occurrence, limits for property damage of not less than \$1 million for each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- 10.1.3 Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$2 million each occurrence, and property damage limits of \$1

million for each occurrence. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

- 10.1.4 Property insurance covering the Licensee Fibers, as well as all personal property and equipment to be used in connection with the Route or at the Demarcation Point(s).
- 10.1.5 The insurance policies shall be in such form and issued by such insurer as shall be reasonably satisfactory to Licensor. The insurer shall be financially solvent with an AM Best Rating of A- or better. In the event of a loss arising out of or related to Licensee 's use of the Route under this Agreement, Licensee 's insurance shall be primary (pay first) with respect to any other insurance which may be available to Licensee , regardless of how the "other insurance" provisions may read.
- 10.1.6 Licensee shall furnish to Licensor within thirty (30) days of the execution of this Agreement and at the request of Licensor, but no more than annually, a certificate evidencing compliance with the foregoing requirements. This certificate will list Licensor as an additional insured and will include the following cancellation, suspension, material change or nonrenewal language: "In the event of cancellation, suspension, material change or nonrenewal of any of the said policies, the insuring company shall give the party to whom this certificate is issued thirty (30) days prior notice of such event."
- 10.1.7 At Licensee's expense, Licensor shall have the right at any time to require public liability insurance and property damage liability insurance greater than the limits specified herein if such higher limits are the generally accepted industry standard.

ARTICLE 11. INDEMNIFICATION

- 11.1 Licensee agrees to release, indemnify, defend, and hold Licensor harmless from and defend Licensor against, and assumes liability for any claim relating to, any injury, loss or damage by Licensee 's customers or users, as applicable; and all claims regarding the content, information or data conveyed by Licensee, its customers or its users over the Licensee Fibers.
- 11.2 Each party agrees to release, indemnify, defend, and hold harmless the other party from and against, and to assume liability for, any claim or action related to any injury, loss or damage to any person, tangible property or facilities of any third person or entity to the extent it arises or results, in whole or in part, from any alleged act, omission, or negligence of such party or its agents or employees but not limited to any claim or action arising or resulting, in whole or in part, from any breach of such party's obligations under this Agreement.

ARTICLE 12. TAXES

12.1 Licensor will be fully responsible for the payment before delinquency of any and all ad valorem, property, franchise, gross receipts, sales, use and other taxes directly applicable to the grant of rights made by Licensor to Licensee under this Agreement. Licensee shall be responsible for and shall pay all taxes and governmental charges (a) imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Licensee with respect to the use of the Licensee Fibers or the Network; or (b) which have been separately assessed, allocated to, or imposed by reference to the Licensee Fibers or Licensee's use of the Network or the Fibers. In no event is either Party responsible to the other Party for any taxes arising from or related to the income of the other Party, the other Party's use of the Cable containing the fibers in which it is receiving a License, or the other Party's interest in such Cable.

ARTICLE 13. DEFAULT

13.1 Events of Default. An event of default under this Agreement occurs if: (i) Licensor violates any applicable law or other legal requirement which results in a material impact on the Licensee's use of the Licensee Fibers; (ii) Licensee fails to pay any undisputed amount due under this Agreement, or (iii) a Party fails to provide maintenance and/or repair services as agreed upon herein; or (iv) a Party fails to perform any other material obligation under this Agreement.

13.2 Notice and Right to Cure. If an event of default occurs, the non-defaulting Party may notify the defaulting Party of the event specifying in reasonable detail the nature of the particular default (a "Notice of Default"). The defaulting Party shall have thirty (30) days after receipt of a Notice of Default to cure the event of default or, if the event of default is a non-monetary default and is reasonably capable of being cured but not within such thirty (30) day period, the defaulting Party shall have such additional time as is necessary to cure the event of default provided that the defaulting Party begins and continues commercially reasonable efforts to cure the event of default.

13.3 Remedies.

13.3.1 Termination. In the event the defaulting Party fails to take the curative action(s) described in the preceding paragraph after having received a Notice of Default, the non-defaulting Party has the right, solely at its discretion, to terminate this Agreement. Termination will be immediate and effective upon notice. Upon a termination of this Agreement by either Party pursuant to this Article 13, all licenses granted under this Agreement shall terminate and Licensor shall disconnect, at Licensor's expense, the Licensee from the Licensee Fibers. Each Party shall remove, at its expense, all of that Party's equipment from the real property or ROW of the other Party within thirty (30) days of the date of termination of this Agreement. Any equipment not so removed during such thirty (30) day period may be removed by the other Party at the expense of the Party which failed to remove its equipment during such thirty (30) day period.

13.3.2 Specific Performance. The Parties further agree that the right to terminate and damages under this Agreement may not be sufficient to compensate the non-defaulting Party for a default by the other Party in the performance of the defaulting Party's obligations required under this Agreement, and therefore, that specific performance shall be available to the non-defaulting Party as an alternate remedy in the event the defaulting Party fails to cure such default within the cure period set forth above in Article 13.2. Notwithstanding the foregoing, in no event shall Licensee have the right to seek injunctive relief to compel Licensor to acquire additional ROW or Underlying Rights in the event Licensor's existing ROW is found to be insufficient to support the rights granted to Licensee under this Agreement, if Licensor determines not to relocate or rebuild the Route under Article 8.2, or if Licensor or Licensee terminate this Agreement under Article 16.2.

13.3.3 Monetary Damages. Notwithstanding anything herein to the contrary, neither Party shall have any monetary liability to the other for breach of this Agreement except:

- (i) In the case of termination of this Agreement due to a default by Licensee, the Licensor shall continue to be entitled to collect any amounts due from the Licensee under Article 2 above prior to such termination;
- (ii) Each Party shall have the right to receive insurance proceeds, to the extent provided for under Article 10, and to indemnification, to the extent provided for under Article 11; and

ARTICLE 14. CONFIDENTIAL INFORMATION

14.1 Commencing on the Effective Date and continuing for a period of two (2) years from the expiration or any earlier termination of this Agreement, each Party shall protect as confidential, and shall not disclose to any third party, any Confidential Information received from the disclosing Party or otherwise discovered by the receiving Party while this Agreement is in effect, including, but not limited to, the pricing and terms of this Agreement, and any information relating to the disclosing Party's technology, business affairs, broadband requirements, or financial status or records (collectively the "Confidential Information"). The Parties shall use Confidential Information only for the purpose of this Agreement. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (a) is in the possession of the receiving Party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (b) is or becomes publicly known, through no wrongful act or omission of the receiving Party; (c) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (d) is developed independently by the receiving Party without reference to the Confidential Information, or (e) is required to be disclosed by law, regulation, or court or governmental order. The Parties agree that any press release disclosing the fact that the Parties have entered into this Agreement must first be mutually approved by the Parties.

ARTICLE 15. ASSIGNMENT

- 15.1 The Parties agree this Agreement and each of the Party's respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their permitted successors and assigns.
- 15.2 Except as otherwise provided in this Agreement, neither Party shall assign, sell, transfer, delegate or in any other manner dispose of any of its rights, privileges or obligations under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign, sell, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without consent of the other Party (i) to an affiliate of such Party, (ii) to any successor to its business, or a substantial part thereof, whether through merger, amalgamation, consolidation or sale, and/or (iii) by Licensee to its customers and other third parties in the exercise of Licensee's permitted uses under this Agreement, including Licensee shall have the right to lease, sublease, license, exchange or otherwise transfer any or all of the Licensee Fibers and associated rights or any capacity applicable thereto to its customers or other third parties; provided, however, that Licensee shall remain Licensor's sole point of contact under this Agreement and such customers or third parties shall not be entitled to independently enforce any of Licensor's obligations under this Agreement.

ARTICLE 16. FORCE MAJEURE

- 16.1 Neither Party shall be held liable for any delay, or failure in performance of any obligation under this Agreement when such delay or failure results from any cause beyond its control, such as: acts of God, acts of civil or military authority, governmental regulations, war, terrorist acts, insurrections, explosions, fires, earthquakes, tornadoes, nuclear accidents, floods, strikes not attributable to acts of a party at odds with applicable law, power blackouts, other major environmental or weather conditions or inability to secure equipment, provided the Party claiming relief under this Article shall promptly notify the other in writing of the existence of the event relied on and the cessation or termination of said event. The Party claiming relief under this Article shall exercise best efforts to minimize the time for any such delay.
- 16.2 Both Parties acknowledge events described above in Article 16.1 may occur which are incapable of being cured so as to allow all Parties the full benefit of their rights under this Agreement. If a Party is unable to make use of the rights granted to it under this Agreement due to an event of force majeure as described in Article 16.1 hereunder, and the force majeure occurs and remains uncured after sixty (60) days, either Party may, at its option, terminate this Agreement. In the event of a termination under this Article 16.2, Licensor shall refund an amount equal to that portion of the License Fee based on the number of months remaining in the initial Term or the number of months in the Renewal Term, as applicable. Licensor's payment of the reimbursement amount calculated hereunder shall extinguish all of Licensor's obligations without any further liability under this Agreement with respect to the terminated Route.

ARTICLE 17. NOTICES

- 17.1 Notices given under this Agreement shall be in writing and will be deemed given: (a) three (3) days after deposit in the U.S. Mail, first class postage prepaid, certified with return receipt requested, (b) one (1) day after sent by correctly addressed electronic mail, (c) two (2) days after deposit, if sent by overnight courier, or (d) upon receipt, if delivered via hand delivery. All notices shall be sent to:

Invoices/Legal/Contractual Notices:

Licensee:

Town of Blowing Rock

Attn: Accounts Payable

1036 Main Street

Blowing Rock, NC 28605

Licensor:

Legal/Contractual Notices

RidgeLink, LLC

c/o Brad Shields

P.O. Box 112

Lenoir, North Carolina 28645

Phone No.: 828.758.2383

E-Mail: bshields@blueridgeemc.com

Or to replacement addresses which may be later designated in writing.

ARTICLE 18. MISCELLANEOUS

- 18.1 Unless a specific payment date is specified in this Agreement, all payments by Licensee will be due within thirty (30) days from the date of the Licensor invoice (which will be promptly mailed by Licensor). Unless otherwise specified, Licensee shall pay Licensor interest on overdue amounts at the rate of 0.5% per month.
- 18.2 The failure of either Party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not be considered the waiver of any other term or condition of this Agreement.
- 18.3 This Agreement does not constitute either Party as the agent or legal representative of the other Party and does not create a partnership or joint venture between the Parties. The Parties may engage in and possess other business ventures which are competitive with the services under this Agreement. This Agreement is not intended to be an exclusive Agreement, license, lease or transfer of rights in optical fibers.
- 18.4 This Agreement, including all exhibits and attachments, sets forth the entire Agreement between the Parties with respect to the subject matter contained herein and may not be amended or modified except by written document signed by both Parties.
- 18.5 If any provision of this Agreement is held to be unenforceable, the remaining provisions will remain in effect, to be construed as if the unenforceable provisions were originally deleted.

- 18.6 Except where specifically provided in this Agreement to the contrary, the rights and remedies of the Parties are cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision of this Agreement will not constitute a waiver of the same or any other provision. The laws of the State of Tennessee will govern this Agreement; provided that to the extent the laws of the State of Tennessee fail to address an issue or are preempted by Federal law, Federal law shall govern. In the event of litigation, the Parties waive any rights to request a jury trial.
- 18.7 Articles 9, 11, 12, 13, 14 and 15 as well as those provisions of this Agreement which by their sense and context are intended to survive the performance thereof by the Parties will survive the completion of performance and termination of this Agreement.
- 18.8 Each Party will perform its obligations hereunder in such a manner that its performance does not violate any governmental law, rule, or regulation in any material respect. Each Party hereto shall bear all of its own expenses and fees (including any legal, accounting, professional or brokerage fees) incurred in connection with the negotiation and drafting of this Agreement.
- 18.9 The headings in this Agreement are for the convenience of the Parties and will have no effect on the legal interpretation of this Agreement.
- 18.10 This Agreement supersedes all previous discussions, negotiations, representations, or agreements respecting the subject matter hereof and shall not hereafter be changed or modified in any respect unless in writing.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives in duplicate originals on the day and year below written, but effective as of the day and year first set forth above.

RidgeLink, LLC

Town of Blowing Rock

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

LICENSOR FIBER SPECIFICATIONS

(a) All splices will be performed with an industry-accepted fusion splicing machine. Testing will be documented on diskettes in Laser Precision format and on trace analysis sheets reflecting bidirectional losses by fiber and installed span loss by fiber. One copy of trace diskettes and three copies of trace analysis sheets will be submitted by each party to the other party promptly upon completion of the testing. All testing will be performed at 1550 nm.

(b) During initial unidirectional OTDR testing, a general indicator of the quality of each splice will be an objective loss of 0.15 Db or less. If, after three attempts, a party is not able to produce a loss value of less than 0.15 Db, then 0.25 Db will become the objective. If, after two additional attempts, a value of less than 0.25 is not achievable, then the splice will be marked as "Out-of-Spec" ("OOS") on a field data sheet. The parties recognize that unidirectional OTDR test data is not an acceptance/rejection criterion. Attempts to improve the loss for existing splices that are marked OOS will not be made unless agreed upon by both parties.

(c) The installed span loss (span shall be FDP to FDP) shall be a bi-directional average of 0.50 Db/km or less, as calculated using an industry-accepted optical loss test set at 1550 nm. The installed span loss includes the inherent attenuation of the glass, the backbone splice losses, the pigtail splice losses, the inherent loss in the pigtails, and the connector losses.

(d) Optical Return Loss will be recorded on the testing documentation, for informational purposes only.

(e) Customer fiber assignments will be consecutive in count. The maximum number of fibers within a single buffer tube (or ribbon or fiber bundle) shall be 12.

(f) Optical Fiber Specifications - Single Mode Fiber

Operation Temperature -60 c to 85 c

Optical Properties 1300-1550 nm

Standard Attenuation < .__0 Db/km @ 1310 nm < .35 Db/km @ 1550 nm

Attenuation Uniformity 0.1 Db/km

Splice Loss < .15 Db per splice bi-directional average < .2 Db for DS fiber

**Additional specifications provided upon request.*

EXHIBIT B

Operations and Maintenance Procedures

1.0 Routine Maintenance

Each Party is responsible for the following functions and services:

1.1 NOC Functions. **Licensor's Network Operations Center can be reached at the toll free number: 1-800-451-5474.**

1.2 Cable Maintenance. Licensor shall perform appropriate routine maintenance on the Cable, including cables, structures, and conduits. Said maintenance will be provided in accordance with generally accepted preventive maintenance procedures.

1.3 Inspection. Licensor shall inspect the Cable on a reasonable, routine basis and shall perform all required adjustments or corrections to meet the standards defined in this Agreement.

2.0 Planned Cable Maintenance Activity

2.1 The Licensor will notify the Licensee at least five (5) business days prior to any scheduled routine maintenance on a Cable. Any planned service outage will have a beginning and ending time and a scope of activities to occur during such planned service outage. Any scheduled routine maintenance that may result in a temporary degradation of service quality or outage shall generally be undertaken in a manner consistent with Article 5 of the Agreement.

2.2 If a planned activity is canceled or delayed, the Licensor shall promptly notify the Licensee and shall comply with the provisions of Section 2.1 of these Operations and Maintenance Specifications with regard to any rescheduling of the delayed activity.

3.0 Fiber and Cable

3.1 Each Party's goal is to limit the number of Service Affecting Conditions, including fiber cuts or single fiber failures, and to minimize the duration to less than twenty-four (24) hours or the minimum time practicably possible, whichever is less, when and if the Service Affecting Conditions occur, as follows (See Article 5.8 of the Agreement for target response times).

3.2 The first objective is to localize the fault. Once the fault is identified, the next objective will be to provide a safe and secure work environment for temporary restoral. Restoration shall continue until all in-service fibers are temporarily restored.

3.3 Within twenty-four (24) hours after completion of an emergency repair, the Licensor shall commence planning for permanent repair in close coordination

with the Licensee to restore the applicable Cable within a reasonable amount of time and with minimum disruption of the Licensee Fibers.

3.5 Under no conditions shall Licensee 's personnel enter the Licensor's rights-of-way or emergency areas associated with any Cable until the Licensor employee holding the transmission line caution order directs the Licensee 's personnel that they may enter such ROW or area. Such access will only be granted to allow the Licensee's employees to perform their respective duties or rights as defined in the Agreement. Under no circumstances shall Licensee's personnel or contractors climb transmission towers and/or distribution poles.

4.0 Licensee Access to Splice Points

4.1 Licensee's access to the Licensee Fibers will be at the designated Demarcation Point. In accordance with Article 2.1 of the Agreement, Licensee may request other Demarcation Points.

4.2 Licensee shall have the right to establish a connection to the Licensee Fibers on its side of the Demarcation Point established within the distribution panel(s) or other fiber connection scheme that totally isolates such Licensee Fibers from the other fibers in the Cable. Such interface or Demarcation Point will be clearly marked on the As-Built Drawings.

4.3 The Licensor may require the Licensee to pay the costs of maintaining any splice point that presents unusual problems of access for the Licensor. Upon request, the Licensee shall also provide a trained and qualified technician at the appropriate Fiber Distribution Panel with an Optical Time Domain Relection meter to assist the Licensor in performing inspection, maintenance, or repair in situations where the Licensor does not have sufficient physical access to verify splicing specifications for the Licensee Fibers.

**RIDGELINK ESCALATION LIST
OUTAGES/TROUBLES**

1. **Primary Contact for Trouble Reporting**
 Work (Main) 1-800-451-5474
 1-828-758-2383 ext 3296

2. **Kent Landholm Pole Attachment Coordinator**
 Work 828-758-2383 ext. 4211
 Mobile 828-773-5176
 Email: klandholm@blueridgeemc.com

3. **Mike Lowe Manager, Communications / Fiber Optics**
 Work 828-758-2383 ext. 3267
 Mobile 828-493-1887
 Email: mlowe@blueridgeemc.com

4. **Brad Shields Director of Information Technology**
 Work 828-758-2383 ext. 3251
 Mobile 828-268-2352
 Email: bshields@blueridgeemc.com

Note: The RidgeLink phone numbers provided above should be called in order with the Primary Contact for Trouble Reporting being the first dialed. The numbers may change over time; therefore, this schedule is subject to updates.