

March 13, 2024

Dunmore Borough Solicitor
Michael Perry, Esquire
O'Malley & Perry
345 Wyoming Avenue
Scranton, PA 18503
mperry@ohdplaw.com

RE: Borough of Dunmore Bond

Dear Mr. Perry:

As you may know, Corning Optical Communications LLC ("Corning") and Gigapower, LLC ("Gigapower") are working on a project to construct a fiber network that will traverse certain portions of Borough of Dunmore ("Dunmore").

Per discussions between Corning and Dunmore on January 19, 2024, Corning will be installing telecommunications equipment within the bounds of the issued utility easements and Corning is responsible for sufficiently restoring resident's yards to their previous conditions (as documented in photographs taken prior to commencement of the project). As such, Corning and Dunmore have agreed that Corning will provide a \$100,000.00 bond (the "Bond") to Dunmore to cover certain expenses for restoring residents' yards to their previous conditions, as described below.

Corning and Dunmore (the "Parties") agree that any disputes over whether Corning sufficiently restored a Dunmore resident's yard to its previous condition shall be referred to and finally resolved by arbitration under the following terms:

- The arbitration shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect.
- The arbitration shall be administered by one arbitrator, who shall be randomly selected as follows:
 - The AAA will provide a list of up to 10 arbitrators located within a reasonable distance of Dunmore who: (1) have sufficient experience in commercial legal disputes, (2) charge an acceptable rate (to be determined in Corning's discretion), and (3) can conduct the arbitration in a reasonable time (such timeframe to be mutually agreed upon by the Parties).
 - Each potential arbitrator will be assigned a sequential number (*e.g.* n, n+1, n+2). The arbitrator will be selected using a mutually agreeable random number generator program.
 - If the randomly selected arbitrator cannot administer the arbitration for any reason, a new random number will be generated to select the arbitrator from the list of remaining potential arbitrators.
- The arbitration shall take place in a mutually agreeable location in Dunmore.

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- Any administrative costs and fees associated with arbitration (such as arbitrator fees) shall be drawn from the Bond.
- Any party to arbitration shall be responsible for their own attorney fees and costs.

The Parties further agree if the arbitration results in a finding that Corning did not sufficiently restore a yard to its previous condition, the sole remedy against Corning shall be that Corning restores the subject yard to its previous condition, and all such costs for said restoration shall be sourced from the Bond, as set forth below.

In addition, and further pursuant to discussions that occurred between Corning and Dunmore on January 19, 2024, Corning previously provided the Bond with a value of \$100,000.00. The Bond shall be used solely if: (1) the Parties mutually agree in writing that Corning did not sufficiently restore a Dunmore resident's property to its previous condition, (2) an arbitration ruling holds that Corning did not sufficiently restore a Dunmore resident's property to its previous condition, or (3) any undisputed arbitration costs or fees are charged to Gigapower, Corning, or Dunmore.

Corning also agrees to indemnify Dunmore for claims, demands, losses, or expenses by Dunmore residents against Dunmore that directly challenge the utility easements for which Gigapower and Corning, as contractors, are permitted to place their facilities within designated locations in Dunmore. This indemnification, which is separate and distinct from the Bond, is limited to a total of \$250,000.00 for any claim whatsoever related to the stated indemnification, both individually and in the aggregate.

Finally, Corning will perform installation work in Dunmore under the following conditions:

- Installation work commence after sunrise.
- Installation work will conclude by 6:00 PM.
- No underground installation work will take place on Sundays.
- Holes or other similar conditions created by the installation work will be covered or otherwise mitigated upon conclusion of the day's work.

Corning's on-site personnel will monitor these work conditions and ensure compliance by its contractors onsite. Corning reserves the right to modify these work conditions only in exigent circumstances such as emergency repair work and will inform Dunmore if such need arises.

Please sign below to confirm Dunmore's acceptance of this agreement and return an executed copy to me. If you have any further questions or concerns, please reach out.

Regards,



Darren Schmidt

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Cc (via e-mail):

Gregory Wolff

Borough Manager

Emergency Management Coordinator

400 S. Blakely St

Dunmore, PA 18512

greg.wolff@dunmorepa.gov

ACKNOWLEDGED AND AGREED:

Borough of Dunmore, Pennsylvania

Signature

Date

By: _____