

**RESOLUTION NO. 2016-6/VACANT PROPERTY**

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF WEST DEER ACKNOWLEDGING THAT THE ACQUISITION AND SUBSEQUENT DISPOSITION OF PARCEL WITH LOT AND BLOCK NUMBER 1838-N-177 WOULD BE IN ACCORDANCE WITH THE COMPREHENSIVE PLAN OF THE MUNICIPALITY.

RESOLUTION ATTACHED.

PROPERTY LOCATION – 186 Shoaf Street

MR. PAYNE.....

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO ADOPT RESOLUTION NO. 2016-6 ACKNOWLEDGING THAT THE ACQUISITION AND SUBSEQUENT DISPOSITION OF PARCEL WITH LOT AND BLOCK NUMBER OF 1838-N-177 WOULD BE IN ACCORDANCE WITH THE COMPREHENSIVE PLAN OF THE MUNICIPALITY.

	MOTION	SECOND	AYES	NAYES
MR. GUERRE	—	—	—	—
MRS. ROMIG	—	—	—	—
MR. VAEREWYCK	—	—	—	—
MRS. HOLLIBAUGH	—	—	—	—
DR. DISANTI	—	—	—	—
MR. FLORENTINE	—	—	—	—
MR. FLEMING	—	—	—	—

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WEST DEER TOWNSHIP  
ALLEGHENY COUNTY, PENNSYLVANIA

**RESOLUTION NO. 2016-6**

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF WEST DEER ACKNOWLEDGING THAT THE ACQUISITION AND SUBSEQUENT DISPOSITION OF PARCEL WITH LOT AND BLOCK NUMBER 1838-N-177 WOULD BE IN ACCORDANCE WITH THE COMPREHENSIVE PLAN OF THE MUNICIPALITY.**

WHEREAS, the Township of West Deer, hereinafter referred to as "Municipality", in cooperation with the County of Allegheny and the Redevelopment Authority of Allegheny County are participating in the Allegheny County Vacant Property Program (Program); and

WHEREAS, certain properties have been submitted to the County for consideration under the Program known and identified as Lot and Block Number: 1838-N-177 and;

WHEREAS, under the Program the Municipality is required to review the property acquisition and propose disposition, and submit its approval to the County that said acquisition and proposal resale is in accordance with the Municipality's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED by the West Deer Township Board of Supervisors as follows:

1. That the above listed properties have been reviewed by the Municipality and it approves that its acquisition and subsequent disposition under the Program would be in accordance with the Comprehensive Plan of the Municipality.
2. That a certified copy of this Resolution should be forwarded to the County of Allegheny and the Redevelopment Authority.

RESOLVED this 16<sup>th</sup> day of March, 2016 by the Board of Supervisors of the Township of West Deer.

ATTEST:

TOWNSHIP OF WEST DEER

\_\_\_\_\_  
Township Manager

\_\_\_\_\_  
Chairman, Board of Supervisors

**CERTIFIED COPY**

I, the undersigned, the duly appointed Manager of the Township of West Deer, Allegheny County, Pennsylvania (the "Township") hereby certify that: The foregoing is a true and correct copy of a Resolution of the Township Board of Supervisors (the "Supervisors") which was duly adopted by the Supervisors in a public session duly convened on March 16, 2016. The said Resolution has been duly recorded in the official Minutes of the Township of West Deer, Allegheny County, Pennsylvania. The said Resolution remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that the Supervisors of the Township complied with the requirements of the "Sunshine Act," Act of July 3, 1986, P.L. 388, No. 84 § 1 et seq. (65 P.S. § 271-286) as amended, relative to the adoption of the foregoing Resolution.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the official seal of the Township, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
Daniel J. Mator, Jr.  
Township Manager

Parcel ID : 1838-N-00177-0000-00  
Property Address : 186 SHOAF ST  
TARENTUM, PA 15084

Municipality : 952 WEST DEER  
Owner Name : BRODKA RUDOLPH

Data displayed on this map is for informational purposes only. It is not survey accurate and is meant to only show a representation of property lines.

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Buyers Rental  
Vacant Land

**Indiana/West Deer Townships**

- 4. Explore potential incentives for commercial/industrial development in designated areas. Years 1-3
  - a. Research federal and state funding resources to support create incentives.
  - b. Employ local tax abatement as appropriate.
  
- 5. Explore options for public transportation opportunities that would provide access to, at a minimum, the city of Pittsburgh (possible joint strategy). Years 4-7
  - a. Meet with the Port Authority of Allegheny County to discuss the opportunities and demand requirements for providing transit service to Indiana and West Deer Townships.
  - b. Conduct a feasibility assessment to determine the level of interest in transit service and the potential demand for services based on opportunities identified by the Port Authority.
  - c. Identify priority locations for transit stops and/or park-and-ride locations.
  - d. Identify improvements and associated permits required to support public transit.
  
- 6. Improve highway infrastructure to provide more and better accessibility (joint transportation plan). Years 4-7
  
- 7. Expand public water and sewer infrastructure to replace on-lot systems – especially in areas designated for growth (joint planning opportunity). Years 4-7
  - a. Work with public water and sewer providers in each township to determine capacity to accommodate projected growth beyond 2020.

**Housing**

As previously noted, the majority of developed land in Indiana Township is residential. The rural character of the township and the quality of the school district can make it an attractive place for families with children and one of the township's greatest strengths is the availability of land for potential development. Although the majority of homes are single-family owner-occupied, existing housing is available at a variety of price-points that are affordable for all income levels, from starter homes to those priced for mid-range and upper income levels. However, based on information gathered from Advisory Committee members, many of the newer homes that are being built in the township are not affordable for the average household in Indiana Township.

The mix of age groups within a community is an important indicator in planning for future housing. As seen in the "Existing Conditions" section of the Joint Comprehensive Plan, the

## **Indiana/West Deer Townships**

population in Indiana Township is aging, and the population between the ages of 25 and 54 is steadily declining. A community with an aging population that is not attracting new, younger residents can expect and plan for the following:

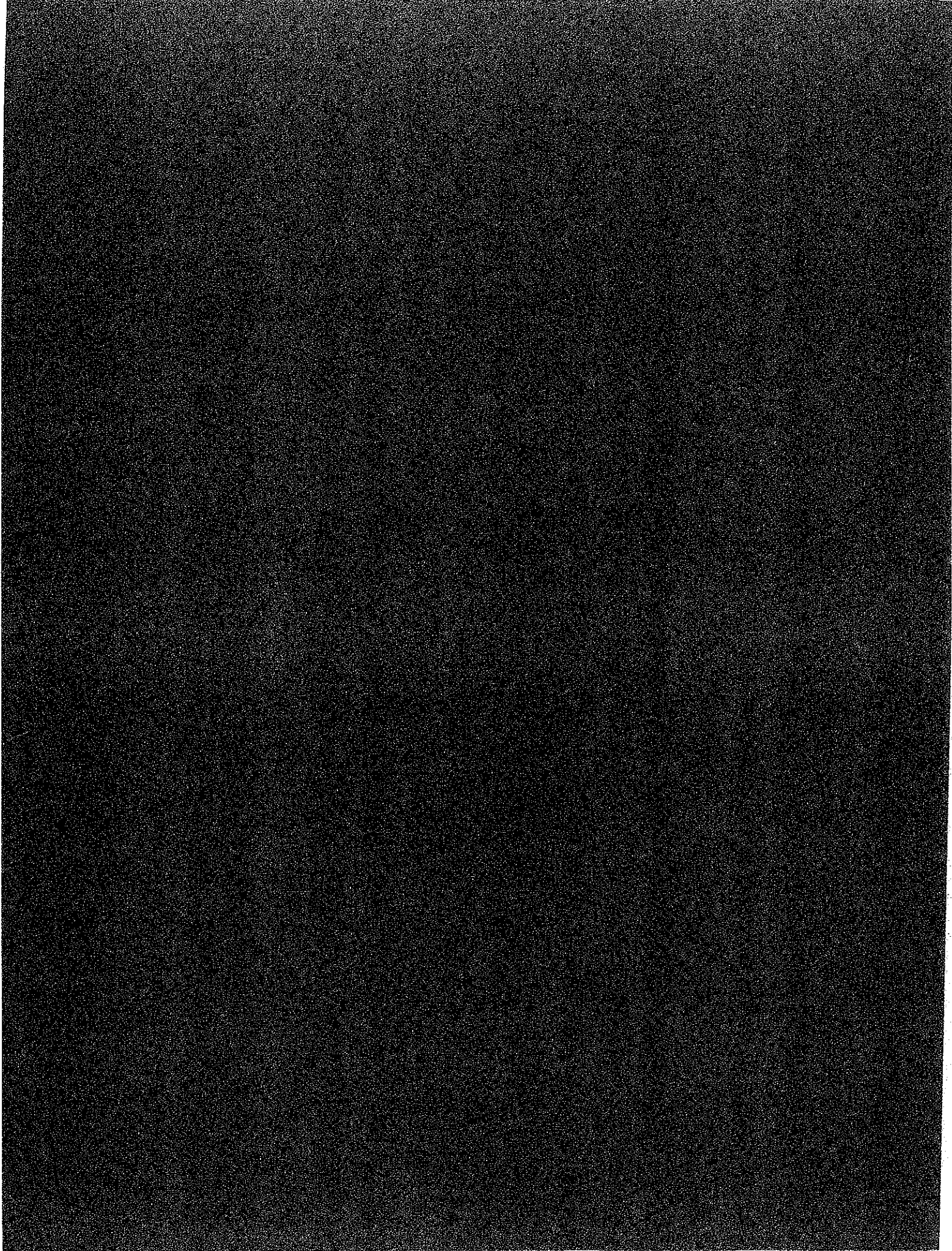
- \* Lower birth rates and higher death rates, which will lead to decreases in population
- \* An increase in housing vacancies as the population decreases
- \* A smaller workforce, which can make the area less attractive to new businesses
- \* A decrease in tax revenue as property assessment values and earned income decrease

As in Indiana Township, residential is the primary land use in West Deer Township, and one of its strengths is the abundance of developable land. The majority of housing in the township is single-family owner-occupied, with a variety of price-points that are affordable for all income levels. As previously noted, one of the township's weaknesses is the lack of commercial development. As in Indiana Township, West Deer Township is also experiencing a steady decline in the population between the ages of 25 and 54.

Indiana and West Deer Townships' strategies over the next 10 years for providing adequate housing for its current and future residents include the following:

1. Encourage (Indiana Township) or maintain (West Deer Township) greater diversity in new housing development – both in types of housing and in price points that are affordable to all income levels. Years 1-3
  - a. Allow for areas with higher density to support affordable housing.
  - b. Employ inclusionary zoning to require a minimum number of affordable units in new housing developments.
2. Explore options and incentives for the acquisition and demolition of blighted properties. Years 1-3
  - a. Research federal state and county funding sources for acquisition and/or demolition of blighted properties.
  - b. Seek assistance from Allegheny County Redevelopment Authority (or other appropriate county agency) for property acquisition if needed.
3. Review current codes governing property maintenance and implement a code enforcement process to mitigate the potential of future blight. Years 1-3

Although residents of Indiana Township have convenient access to over four million square feet of retail amenities outside the township, there is a lack of neighborhood-scale commercial development in the township. In addition, there is a lack of land available with zoning that allows for commercial development, and many residents living in existing residential



**ORDINANCE NO. 407/CONSOLIDATED CABLE FRANCHISE AGREEMENT:**

ORDINANCE NO. 407

AN ORDINANCE OF THE TOWNSHIP OF WEST DEER AUTHORIZING EXECUTION OF A CABLE FRANCHISE AGREEMENT BETWEEN THE TOWNSHIP AND CONSOLIDATED COMMUNICATIONS ENTERPRISES, INC.

ORDINANCE ATTACHED.

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO ADOPT ORDINANCE NO. 407 ACCEPTING THE CABLE FRANCHISE AGREEMENT BETWEEN THE TOWNSHIP AND CONSOLIDATED COMMUNICATIONS AND TO ADVERTISE THE ORDINANCE IN ACCORDANCE WITH ALL APPLICABLE LAWS.

	MOTION	SECOND	AYES	NAYES
MRS. HOLLIBAUGH	___	___	___	___
MR. GUERRE	___	___	___	___
MRS. ROMIG	___	___	___	___
MR. VAEREWYCK	___	___	___	___
DR. DISANTI	___	___	___	___
MR. FLORENTINE	___	___	___	___
MR. FLEMING	___	___	___	___



**OFFICIAL**

**WEST DEER TOWNSHIP  
County of Allegheny  
Commonwealth of Pennsylvania**

**ORDINANCE NO. 407**

**ORDINANCE OF THE TOWNSHIP OF WEST DEER AUTHORIZING EXECUTION OF A  
CABLE FRANCHISE AGREEMENT BETWEEN THE TOWNSHIP AND CONSOLIDATED  
COMMUNICATIONS ENTERPRISES, INC.**

**WHEREAS**, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any future amendments thereto (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Pennsylvania law, the Township is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Township's jurisdiction; and

**WHEREAS**, Consolidated currently holds a cable franchise from the Township by virtue of a cable franchise agreement executed in 2008, originally granting a cable franchise to North Pittsburgh Telephone Company; and

**WHEREAS**, Consolidated has requested that the Township renew Consolidated's franchises to maintain, construct, operate, and upgrade its cable system over, under and along the aforesaid rights-of-ways for use by the Township's residents; and

**WHEREAS**, the aforesaid rights-of-way used by Consolidated are public properties acquired and maintained by the Township on behalf of the citizens of the Township, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the Township desires to protect and manage the aforesaid rights-of-way, establish standards of customer service, maintain a technologically advanced cable system, receive franchise fees for Consolidated's use of the Township's rights-of-ways as provided by federal law, obtain the use of an educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services and provide for the current and future cable-related needs of its residents; and

**WHEREAS**, the Township held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the Township's future cable-related community needs; and

**WHEREAS**, the Township has determined that Consolidated has the financial, legal and technical ability to provide cable service to subscribers located in the Township; and

**WHEREAS**, the Township, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing a franchise with Consolidated according to the terms and conditions contained in the Cable Franchise Agreement

("Agreement") and that the process for consideration of these documents complies with all applicable federal, state and local laws and regulations.

**NOW THEREFORE, BE IT ORDAINED THAT**

**SECTION 1: Grant of Franchise**

The Township Board of Supervisors does hereby approve the Agreement negotiated with Consolidated, including all of the terms and conditions contained therein, and does hereby authorize the execution of such Agreement. A copy of the Agreement is attached hereto as Exhibit A.

**SECTION 2: Repealer**

All ordinances inconsistent with the attached Cable Franchise Agreement by and between the Township of West Deer and Consolidated Communications Enterprises, Inc. are hereby repealed.

**SECTION 3: Severability**

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not render this Ordinance invalid.

**SECTION 4: Effective Date**

This Ordinance shall become effective as provided by law.

[SIGNATURE PAGE TO FOLLOW]

ORDAINED AND ENACTED this 16<sup>th</sup> day of March 2016.

ATTEST:

WEST DEER TOWNSHIP

\_\_\_\_\_  
Township Manager

\_\_\_\_\_  
Chairman of the Board of Supervisors

Approved as to Form:

\_\_\_\_\_  
Township Solicitor

**CERTIFICATE**

I, the undersigned, hereby certify that the foregoing and attached is a true copy of an Ordinance which was duly enacted at a meeting of the Board of Supervisors of West Deer Township on 16 March 2016, and that at such meeting a quorum was present and acting throughout, after due notice to the members of the Board of Supervisors of West Deer Township and to the public and such meeting was at all times open to the public; that the Ordinance was duly recorded in the West Deer Township Minutes Book and that a summary thereof was published as required by law in a newspaper of general circulation in the Township. I further certify that the Township met the advance requirements of Act No. 1998-93 by advertising the date of the meeting and posting a notice of the meeting at the public meeting place of the Board of Supervisors; that the total number of members of the Board of Supervisors is seven; and the vote upon the Ordinance was called and duly recorded upon the minutes and that the members voted in the following manner:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Jeffrey D. Fleming, Chairman				
Richard W. DiSanti, Jr., Vice Chair				
Rick W. Florentine				
Leonard Guerre				
Shirley A. Hollibaugh				
Joyce A. Romig				
Gerry Vaerewyck				

WITNESS my hand and the seal of the Township on this 16<sup>th</sup> day of March 2016.

[SEAL]

By: \_\_\_\_\_  
Daniel Mator  
Township Manager

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**THE TOWNSHIP OF WEST DEER  
(A MEMBER OF THE NORTH HILLS COUNCIL OF GOVERNMENTS)**

**AND**

**CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC.**

With assistance from:

Cohen Law Group  
1000 Gamma Drive, Suite 305  
Pittsburgh, PA 15238  
Phone: (412) 447-0130  
[www.cohenlawgroup.org](http://www.cohenlawgroup.org)

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## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (hereinafter referred to as the "Effective Date") by and between the Township of West Deer, a municipality located in Allegheny County, Pennsylvania (hereinafter referred to as the "Township") and Consolidated Communications Enterprise Services, Inc., a Delaware Corporation with a principal place of business at 121 South 17<sup>th</sup> St., Mattoon, IL 61938 (hereinafter referred to as "Consolidated").

**WHEREAS**, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Pennsylvania law, the Township is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the Township's jurisdiction; and

**WHEREAS**, Consolidated currently holds a cable franchise from the Township by virtue of a cable franchise agreement dated \_\_\_\_\_, originally granting a cable franchise to Consolidated's affiliate, Consolidated Communications of Pennsylvania Company fka North Pittsburgh Telephone Company; and

**WHEREAS**, the Township has requested that Consolidated renew its franchise to maintain, construct, operate, and maintain its Cable System over, under and along the aforesaid rights-of-ways for use by the Township's residents; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by Consolidated are public properties acquired and maintained by the Township on behalf of the citizens of the Township, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the Township desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Consolidated's use of the Township's rights-of-ways as provided by federal law, obtain the use of an educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the Township, and meet the current and future cable-related needs of its residents; and

**WHEREAS**, the Township has held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the Township's future cable-related community needs; and

**WHEREAS**, the Township has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the Township, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Consolidated's franchise



according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Township and Consolidated agree as follows:

**SECTION 1**  
**DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Consolidated.

(b) Basic Service - The service tier that includes at least the retransmission of local broadcast television signals and any Educational and Governmental ("EG") access channel.

(c) Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Township but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; (5) any facilities of any electric utility used solely for operating its electric utility systems; or (6) any equipment or facilities used to transmit wireless video, telecommunications, or broadband service.

(f) Channel - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by FCC regulation.

(g) Complaint - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Consolidated's business or the operation of its Cable System.

(h) Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Conveniently Located - Located within five (5) miles of the jurisdictional limits of the Local Franchising Authority.

(j) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(k) Educational and Governmental (EG) Channel - An access channel that consists of local educational and/or governmental programming.

(l) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable system in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(m) FCC - Federal Communications Commission.

(n) Force Majeure - Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; or unavailability of materials or equipment.

(o) Franchise - The right granted by the Township to construct, operate and maintain a Cable System within the corporate limits of the Township as embodied in the terms and conditions of this Agreement.

(p) Franchise Fee - The fee that Consolidated remits to the Township for the use of the Township's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(q) Gross Revenues - All revenue received directly or indirectly by Consolidated or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Consolidated's Cable System in the Township to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees for all digital video tiers;

- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;
- (10) fees for service calls;
- (11) inside wire maintenance fees;
- (12) service plan protection fees;
- (13) convenience fees;
- (14) early termination fees;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all equipment, including converters and remote control devices;
- (18) any and all locally-derived advertising revenues;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services;
- (21) fees for any and all music services;
- (22) broadcast retransmission fees;
- (23) late payment fees;
- (24) billing and collection fees;
- (25) NSF check charges; and
- (26) Franchise Fees.

Gross Revenues shall not include non-Cable Service revenue under federal or state law including, as of the Effective Date of this Agreement, revenue received from “telecommunications services” (as that term is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(53)) including telephone and telephone-related services, “advance communications services” (as that term is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(1)), and “information services” (as that term is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(24)) including internet access and other broadband services, electronic mail service, internet-based electronic bulletin board service or similar online computer services, “over-the-top” services; bad debts, investment income, refunded deposits, or any taxes on services furnished by Consolidated and imposed directly upon any Subscriber or user by the Township, state, federal or other governmental unit; and any other revenues deemed to be non-Cable Services in accordance with applicable law or regulations. In the event of any dispute over the classification of revenue, the Township and Consolidated agree that reference should be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”). Should there be a change in applicable law or regulation that classifies any of the following services as a “Cable Service” or otherwise authorizes revenues from such services to be subject to the franchise fee, then the parties agree that Section 9.12 of this Agreement shall govern for purposes of amending, as appropriate, this subsection and the Agreement to comply with said change in law or regulation: telecommunications services, advance communications services,

information services, internet access, broadband services, electronic mail service, internet-based electronic bulletin board service, or "over-the-top" services.

- (r) HD - High definition format.
- (s) Leased Access or Commercial Access Channel - Any channel on Consolidated's Cable System designated for use by any entity that is unaffiliated with Consolidated pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.
- (t) Multiple Dwelling Units or MDUs - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.
- (u) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.
- (v) Normal Operating Conditions - Business conditions within Consolidated's service department which are within the control of Consolidated. Those conditions that are not within the control of Consolidated include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.
- (w) Outlet - An interior receptacle that connects a television set to the Cable System.
- (x) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.
- (y) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Township.
- (z) Service Interruption - The loss of picture or sound on one or more channels.
- (aa) Subscriber - A person or entity who contracts with Consolidated for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

## **SECTION 2**

### **GRANT OF FRANCHISE**

#### **2.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the Township hereby grants a non-exclusive and revocable franchise to Consolidated. Subject to the terms and

conditions contained herein, the Township hereby grants to Consolidated the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the Township has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

## **2.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of eight (8) years commencing on the Effective Date and expiring on \_\_\_\_\_, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

## **2.3 SERVICE CLASSIFICATION AND RELATED AUTHORITY**

Consolidated acknowledges and agrees that the system over which its video service is delivered is a Cable System for which the terms and conditions shall apply for at least the term of this Agreement.

## **2.4 REPRESENTATIONS AND WARRANTIES**

- (a) Consolidated represents, warrants and acknowledges that, as of the Effective Date:
- (1) Consolidated is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;
  - (2) Consolidated has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date, to enter into and legally bind Consolidated to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;
  - (3) This Agreement is enforceable against Consolidated in accordance with the provisions herein, subject to applicable State and federal laws and regulations;
  - (4) There is no action or proceeding pending or threatened against Consolidated which would interfere with its performance or its ability to perform the requirements of this Agreement;
  - (5) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

## **2.5 NON-EXCLUSIVITY**

This Franchise granted to Consolidated shall be non-exclusive. Nothing in this Agreement shall affect the right of the Township to grant other Franchises to construct, operate or maintain a Cable System.

## **2.6 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the Township. Without waiving any of its rights, the Township agrees that, to the extent any term of this Agreement is inconsistent with the terms of any Township cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

### **SECTION 3** **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

#### **3.1 SYSTEM UPGRADE**

(a) Within twenty-four (24) months of the Effective Date of this Agreement, Consolidated shall upgrade its entire Cable System in the Township to a minimum capability of offering channel counts equal to or exceeding those of a traditional 870MHz cable system, a picture quality similar to that displayed via an 870 MHz cable system, and shall include digital service and two-way services to all serviceable addresses. Consolidated may upgrade or rebuild the System using a combination of coaxial, copper, and/or fiber optic cable and in a manner that will ensure that the System will be flexible and adaptable to future technological development. The Township shall not unreasonably delay or deny the issuance of any permits or authorizations required in connection with the Cable System upgrade. After the system has been fully upgraded, the Township, either individually or in conjunction with other North Hills Council of Governments municipalities, shall have the right to inspect the Cable System to ensure compliance with this Section. The Township shall bear all inspection-related costs.

(b) Consolidated shall continue to operate, maintain, construct, and extend the Cable System so as to offer two-way Cable Services for all programming services throughout all parts of the Township where the density requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the generally applicable laws, ordinances and construction standards of the Township.

(c) Consolidated shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours and indefinitely with a continuous or replenished fuel supply. All power supplies serving the System shall be stand-by ready and capable of providing power to the System for not less than four (4) hours per occurrence

measured on an annual basis according to manufacturer specifications in the event of an electrical outage. Consolidated shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed four (4) hours.

### **3.2 AREA TO BE SERVED**

(a) Service shall be provided to every dwelling within Consolidated's Service Area within two hundred (200) feet from the existing distribution system (consistent with Section 5.2(b)), occupied by a person requesting Cable Service provided that Consolidated is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. For any dwelling unit in excess of two hundred (200) feet, Consolidated shall extend the Cable Service at a rate not to exceed Consolidated's actual cost of installation from its main distribution system. Consolidated shall extend the Cable System into all areas within the Township where there is a minimum of fifteen (15) dwelling units per linear plant mile of aerial cable and twenty (20) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Consolidated shall complete said extensions within three (3) months of written notification to Consolidated by the Township that an area has met the minimum density standard set forth herein (weather permitting). Consolidated's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty five (125) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit further than one hundred twenty five (125) feet aerial distance from the main distribution line, Consolidated shall extend the Cable Service and the Subscriber shall pay the cost of installation beyond one hundred twenty-five (125) feet as long as it is technically feasible and plant is available.

(c) The Township has the right to require Consolidated to place wires and/or equipment underground, provided that the Township imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Consolidated shall be underground in those areas of the Township where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating Consolidated's facilities without technical degradation of the Cable System's signal quality. Consolidated shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

### **3.3 CABLE SYSTEM SPECIFICATIONS**

(a) Cable System shall be capable of supporting video and audio, including SD and HD video on the Effective Date of the Franchise.

(b) Consolidated reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement as long as the Cable System shall meet or exceed any and all technical performance standards of the FCC,

the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the Township.

### **3.4 SYSTEM TESTS**

(a) Consolidated shall conduct proof of performance and other system tests as set forth below. Consolidated shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the Township within thirty (30) days of a written request from the Township; provided, however, that Consolidated shall not be required to submit such reports more than one (1) time in any calendar year.

(b) Consolidated shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement or in response to subscriber complaints.

(c) At a minimum, Consolidated's tests shall include:

(1) Proof of performance when activating any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Cable System tests and intervals required by FCC regulations.

(d) Consolidated shall maintain written records of all results of its Cable System tests performed by or for Consolidated. Such test results shall be available for inspection by the Township upon request.

(e) Tests may be witnessed by representatives of the Township, and, upon request, Consolidated shall inform the Township of the time and place of each test. The Township may conduct independent tests of the system for which Consolidated shall give its fullest cooperation. Consolidated shall be required to take prompt corrective measures to correct any system deficiencies and to prevent the recurrence of such deficiencies.

### **3.5 EMERGENCY ALERT SYSTEM**

Consolidated shall comply with the Emergency Alert System requirements of the FCC.



### **3.6 RATE DISCRIMINATION**

All Consolidated residential Subscriber rates and charges shall be published and shall not discriminate among persons in the Township under similar circumstances and conditions. Consolidated shall establish similar rates and charges for all residential Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital status, income or economic status, national origin, sexual orientation, physical or mental disability, or geographic location within the Township. Nothing in this Section shall be construed to prohibit:

(a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(b) The offering of reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

(c) The establishment of different and nondiscriminatory rates and charges and classes of services for commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial subscribers; or

(d) The establishment of reduced bulk rates for residential Subscribers residing in multiple dwelling units.

### **3.7 SERVICES FOR SUBSCRIBERS WITH DISABILITIES**

(a) For any Subscriber with a disability or who is otherwise mobility-impaired, Consolidated shall, at no charge to the Subscriber, deliver and pick up converters and other equipment at the Subscriber's home at the Subscriber's request. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to Consolidated.

(b) Consolidated shall work cooperatively with any services that allow hearing-impaired Subscribers to contact Consolidated by telephone.

### **3.8 SERVICE TO MULTIPLE DWELLING UNITS ("MDUs")**

Consolidated and the Township hereto acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Consolidated, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations, the Pennsylvania Landlord Tenant Act of 1951, as amended, and the applicable provisions of 68 P.S. § 250.501 et seq.

### **3.9 REPAIRS AND RESTORATION**

(a) Whenever Consolidated or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Consolidated to comply within the time specified and the Township having notified Consolidated in writing of the restoration and repairs required, the Township may cause proper restoration and repairs to be made and the expense of such work shall be paid by Consolidated upon demand by the Township.

(b) Whenever Consolidated or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the Township if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Consolidated shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Consolidated's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Consolidated shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Township or any public utility serving the Township.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Consolidated personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Consolidated or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Consolidated shall adhere to any additional undergrounding requirements which the Commonwealth may establish in the future. Consolidated shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the Township, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

### **3.10 SERVICE AREA MAPS**

On an annual basis, Consolidated shall provide to the Township for its exclusive use and shall maintain at its local offices a complete set of Consolidated service area strand maps of the Township on which shall be shown those areas in which its facilities exist and the location of all streets. The strand maps shall be provided to the Township in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the Township's GIS format. The strand maps shall also designate where the cable wires and other equipment are aerial and where they are underground. Consolidated shall provide the Township with updated maps within sixty (60) days after any request by the Township. If Consolidated claims that a map or a portion of thereof is confidential or proprietary, it shall provide a brief explanation as to the reason it is claimed to be confidential or proprietary. The Township shall treat any such information as confidential and proprietary so long as it is permitted to do so under applicable law and shall only disclose it to employees, representatives, and agents that have a need to know.

### **3.11 DISCONNECTION AND RELOCATION**

(a) Consolidated shall, at no cost to the Township, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the Township or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring Consolidated to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Township shall treat Consolidated the same as, and require no more of Consolidated than, any similarly situated entity.

### **3.12 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of fire or other disaster in the Township, it shall be necessary, in the reasonable judgment of the Township or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the Township shall have the right to do so without cost or liability, provided that, wherever possible, the Township shall give Consolidated notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the Township shall treat Consolidated the same as, and require no more of Consolidated than, any other similarly situated entity.

(c) In instances where there does not exist an emergency, the Township shall give Consolidated notice and the ability to relocate wires, cable and other equipment of the Cable System.

(d) In either case (emergency or non-emergency), Consolidated shall have the right to seek reimbursement, if any, under any applicable insurance or state or federal government programs for reimbursement.

### **3.13 TREE TRIMMING**

(a) Consolidated, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Consolidated. Any such tree trimming shall only be performed in accordance with applicable laws and regulations, and shall require Township approval. Consolidated shall fully bear the costs associated with tree trimming.

(b) If Consolidated or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the Township for permission, with the exception of Emergency situations as defined in Section 1(k), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the Township.

### **3.14 CHANNEL CAPACITY**

Consolidated shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

### **3.15 BROADCAST CHANNELS**

To the extent required by federal law, Consolidated shall provide all Subscribers with Basic Service including, but not limited to, the following: a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Educational and Governmental Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

### **3.16 PROGRAMMING CATEGORIES**

In addition to programming provided on any EG channels and the broadcast channels, Consolidated shall provide at least the following broad categories of programming:

- (a) Education
- (b) News and Information
- (c) Children's Programming
- (d) Family Programming
- (e) Government Affairs
- (f) Business News
- (g) Weather

- (h) Culture and Performing Arts
- (i) Sports
- (j) Science/Documentary
- (k) General Entertainment
- (l) Audio Programming Only (for hearing impaired)

The requirements for each category of Programming above may be satisfied by providing a separate Channel devoted substantially to the category or by programming more than one Channel which in the aggregate totals the equivalent of a Channel devoted substantially to the category.

### **3.17 SIGNAL SCRAMBLING**

Consolidated shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

### **3.18 CONTINUITY OF SERVICE**

Subscribers shall continue to receive service from Consolidated provided their financial and other obligations to Consolidated are honored. Subject to Force Majeure provisions in Section 9.1, Consolidated shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Consolidated shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Consolidated shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

### **3.19 PARENTAL CONTROL CAPABILITY**

Consolidated shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

## **SECTION 4 SUBSCRIBER SERVICE STANDARDS**

### **4.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Consolidated shall maintain a business office that is Conveniently Located and shall be open during Normal Business Hours.

(b) Consolidated shall provide and maintain a toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated

response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(d) If an historical record of Complaints indicates a clear failure to comply, Consolidated may be required to perform surveys to measure compliance with the telephone answering requirements above. If the Township determines, after receiving Complaints itself and/or receiving a record of Complaints made to Consolidated in accordance with Sections 4.5 and/or 5.7(a), that there is a clear failure to comply with the telephone answering requirements above, the Township shall notify Consolidated in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the Township with its results.

#### **4.2 INSTALLATIONS AND SERVICE CALLS**

(a) Consolidated shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Consolidated shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Consolidated employee or agent, including any subcontractor, shall prominently display the Consolidated logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing main distribution line.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, Consolidated shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Consolidated may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) Consolidated may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

### **4.3 NOTICES**

(a) Consolidated shall provide written notice to each Subscriber upon initial subscription, at intervals not less than one (1) per year thereafter to each Subscriber and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and Subscriber complaint procedures;
- (7) Consolidated's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) In accordance with applicable law, Consolidated shall notify Subscribers and the Township in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of Consolidated. Consolidated shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the Township on the transaction between Consolidated and the Subscriber.

(c) In accordance with federal law, Consolidated shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Consolidated during the previous twelve (12) months.

### **4.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Consolidated shall not assess late fees for non-payment of a current bill until the last day before the generation of a customer's next monthly bill that contains an undisputed balance from the prior month.

(c) The Township hereby requests that Consolidated omit the Township's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

#### **4.5 SUBSCRIBER COMPLAINT PROCEDURES**

Consolidated shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Consolidated shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint. If the Consolidated response states the need to perform further investigation, then it will provide the customer with a written response containing its decision within sixty (60) days of the original Complaint.

(b) If the Township is contacted directly about a Subscriber Complaint, it shall notify Consolidated promptly and in writing. When Consolidated receives such notification, the time period for Consolidated to respond as required by Section 4.5(a) shall commence. If the Township notifies Consolidated in writing, then Consolidated shall respond in writing within the time period specified in Section 4.5(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Consolidated has the option of withholding the disputed amount, without a late fee or disconnection, until Consolidated has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Consolidated in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Consolidated shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution for a period of two (2) years.

#### **4.6 DISCONNECTION**

Consolidated may disconnect or terminate a Subscriber's service for cause:

(a) If at least sixty (60) days have elapsed from the due date of the bill that Subscriber has failed to pay; and



(b) If Consolidated has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with Consolidated regarding the bill; or

(d) If at any time and without notice, Consolidated determines in good faith that Subscriber has tampered with or abused Consolidated's equipment or service or is engaged in theft of Cable Service.

#### **4.7 SERVICE INTERRUPTIONS**

(a) Excluding conditions beyond its control, Consolidated shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of Consolidated. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Consolidated or scheduled at the convenience of the Subscriber.

(b) In the event that there is a Service Interruption to any Subscriber for twenty four (24) or more consecutive hours and upon receipt of written or credible oral request, Consolidated shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

#### **4.8 PRIVACY**

(a) Consolidated shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Consolidated shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

(b) Consolidated shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Consolidated nor its designee shall tap, monitor, arrange for the tapping or monitoring, any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber; provided, however, that Consolidated may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner consistent with the federal law. Consolidated shall report to the affected parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has

knowledge, whether or not such activity has been authorized by Consolidated. Consolidated shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Consolidated nor its designee nor its employees shall make available to any third party, including the Township, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Consolidated shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Consolidated shall make available for inspection at a reasonable time and place all personal Subscriber information that Consolidated maintains regarding said Subscriber. Consolidated shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

(f) Consolidated shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration in conformance with Section 631 of the Cable Act.

#### **4.9 SENIOR CITIZEN/DISABLED DISCOUNT**

Consolidated shall offer eligible senior citizen and disabled customers a reasonable discount on the rate for the Basic Service Tier per month. Senior citizen customers shall qualify for this discount if they are of they are sixty-five (65) years in age or older and are the head of the household.

### **SECTION 5 REGULATION BY THE TOWNSHIP**

#### **5.1 RIGHT TO INSPECT**

(a) On an annual basis, the Township shall have the option, upon thirty (30) business days' written notice and during Normal Business Hours, to inspect at the notice location for Consolidated specified in Section 9.3, all documents, records and other pertinent information maintained by Consolidated which relate to the terms of this Agreement.

(b) In addition, Consolidated shall maintain for inspection by the public and the Township all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to Consolidated, the Township may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The Township may not conduct a physical inspection of the Cable System or open any vaults, pedestals

or conduits without the express permission of Consolidated. The Township may not inspect the Cable System on Consolidated's property other than for permitted work. If an unsafe condition is found to exist, the Township, in addition to taking any other action permitted under applicable law, may order Consolidated, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the Township.

## **5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The Township or its representatives may conduct a full compliance review with respect to whether Consolidated has complied with the material terms and conditions of this Agreement so long as it provides Consolidated with thirty (30) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Consolidated may organize the necessary records and documents for appropriate review by the Township. Within thirty (30) days of a written request, Consolidated shall provide the Township with copies of records and documents related to the cable compliance review.

## **5.3 RESERVED AUTHORITY**

The Township reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the Township's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

## **5.4 POLICE POWERS**

Consolidated's rights under this Agreement are subject to the police powers of the Township to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

## **5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this section or in this Agreement shall be construed to limit the authority of the Township to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees.

## **5.6 PERMITS**

Consolidated shall apply to the Township for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the Township. Consolidated shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Consolidated shall pay any and all required permit fees.

## 5.7 REPORTING

In addition to the other reporting requirements contained in this Agreement, Consolidated shall provide the following reports to the Township:

(a) Subscriber Complaint Reports

Within thirty (30) days of a written request, Consolidated shall submit to the Township a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the Township and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions.

In addition and upon request, Consolidated shall provide a report containing at least the following statistical information for the previous 12-month period:

- (1) Number of repair service requests received;
- (2) Breakdown by type of complaint received (i.e. complete outage, snowy picture, etc.);
- (3) Breakdown by cause of problem (i.e. subscriber equipment, drop/converter, system, etc.);
- (4) Number of known service interruptions and the approximate length of time of each such interruption;
- (5) Average hold time for Subscriber service telephone calls that were received in the previous quarter;
- (6) Percentage of telephone calls answered within thirty (30) seconds during the previous quarter;
- (7) Percentage of telephone calls received within the previous quarter that were abandoned before being answered by a live operator; and
- (8) Percentage of time when all incoming telephone trunk lines were in a busy condition.

(b) Annual Financial Reports

Within thirty (30) days of a written request, Consolidated shall submit to the Township its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by Consolidated's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. Submission by Consolidated of the most recent U.S. Securities and Exchange Commission Annual Report Form

10-K prepared by Consolidated shall be deemed as satisfactory compliance with this Section 5.7(b).

(c) Government Reports

Consolidated shall provide to the Township, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Consolidated has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Consolidated's Cable System within the Township. Consolidated shall provide copies of such documents no later than thirty (30) days after their request.

**SECTION 6**  
**COMPENSATION TO THE TOWNSHIP**

**6.1 FRANCHISE FEES**

Consolidated shall pay to the Township an amount equal to five percent (5 %) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the Township. Consolidated shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability. The Township may amend the Franchise Fee upon written notice to Consolidated provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the Township shall accompany such written notice. Any change in Consolidated's Franchise Fee obligation contained herein shall commence within sixty (60) days from such written notice. In the event that federal law is amended to authorize a franchise fee higher than five percent (5%), the Township may, after a public hearing at which Consolidated shall have the right to address the issue of franchise fees and after obtaining proper authority from its governing body, direct Consolidated to pay a higher franchise fee.

**6.2 QUARTERLY PAYMENTS**

Franchise Fee payments to the Township under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the Township. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the Township may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Consolidated shall deposit the Franchise Fee payments electronically into an account as designated by the Township.

### **6.3 QUARTERLY REPORTS**

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Consolidated's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Consolidated's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Consolidated.

### **6.4 FRANCHISE FEE REVIEW**

The Township shall have the right to conduct a Franchise Fee review or audit of Consolidated's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such review or audit shall occur within forty-eight (48) months from the date the Township receives such payment, after which period any such payment shall be considered final. Within thirty (30) days of a written request, Consolidated shall provide the Township with copies of financial records related to the Franchise Fee review or audit.

(a) In the event of an alleged underpayment, the Township shall provide Consolidated with a written statement indicating the basis for the alleged underpayment. Based on this exchange of information, the Township shall make a final determination of the underpayment(s), if any, within thirty (30) days of Consolidated's objection and shall provide Consolidated with written notice of the determination. If Consolidated disputes the Township's final determination, it may submit the dispute to mediation or arbitration in accordance with Section 9.7 below within thirty (30) days of receiving the Township's written notice of determination. In the event that Consolidated fails to submit the matter to mediation or arbitration within the required time period, the Township's final determination shall be binding on Consolidated.

(b) Any Franchise Fee payment due to the Township as a result of the Franchise Fee review shall be paid to the Township by Consolidated within forty-five (45) days from the date the Township notifies Consolidated of its final determination. If the Franchise Fee review shows that Franchise Fees have been underpaid, then Consolidated shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment. If Franchise Fees have been underpaid by five percent (5%) or more, then Consolidated shall also pay the reasonable cost of the review or audit.

### **6.5 BUNDLED SERVICES**

If Cable Services subject to the Franchise Fee required under this Section are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, then the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

## **6.6 FRANCHISE FEE REVENUE ALLOCATION**

For purposes of franchise fee revenue pertaining to any revenue sources that is allocated among cable, telecommunications, and/or information services, Consolidated agrees to determine the allocation of revenue among these services based upon the actual number of subscribers in the Township that subscribe to each respective service.

## **SECTION 7 FREE SERVICES TO THE COMMUNITY**

### **7.1 FREE SERVICES TO COMMUNITY FACILITIES**

Upon request, Consolidated shall, at no charge to the Township, provide one (1) complimentary standard installation and complimentary services as described herein below to all present and future public facilities including, but not limited to, the following: the Township Building, police stations, fire companies, public works buildings, traffic signals, community message signs/displays, municipal community and recreational facilities, water and sewer authorities and treatment plants, all public and private school buildings, and public libraries as long as they are in Consolidated's Service Area ("Permitted Free Locations"). In addition, Consolidated shall not terminate any complimentary courtesy Cable Service being provided to Permitted Free Locations as of the Effective Date of this Agreement.

(a) Within three (3) months of the Effective Date and upon request, Consolidated shall provide or maintain one (1) standard cable Drop, outlet, converter box (and any other required end user equipment) and Standard Cable level Services (or equivalent) package to each Permitted Free Location. No charge shall be made for standard installation, except that Consolidated may charge the Township for all costs for installation beyond one hundred and twenty five (125) feet from the cable plant or for more than one (1) drop in each Permitted Free Location.

(b) Within three (3) months of the Effective Date and upon request, Consolidated shall provide or maintain one (1) high-speed internet access service connection to each Permitted Free Location. No charge shall be made for installation or service except that Consolidated may charge for installation beyond one hundred and twenty five (125) feet from the cable plant.

(c) For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended, and does not include "home schools" or "cyber schools," or any other educational situation that does not meet the specific criteria set forth herein. During the term of this Agreement, new public facilities shall be eligible to receive such complimentary service to the extent that they meet the qualifications as set forth herein above as Permitted Free Locations.

## **7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL**

(a) Consolidated shall provide to the Township, within one hundred eighty (180) days of a written request and as set forth herein, the use of one (1) dedicated Educational and Governmental (“EG”) Access Channel in accordance with Section 611 of the Cable Act. Such EG Channel shall be used for community programming related to educational and/or governmental activities. The Township shall have complete control over the content, scheduling, administration and all other programming aspects of the EG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. Consolidated shall not exercise any editorial control over EG Channel programming. Consolidated shall cablecast the activated EG Channel so that it may be received by all Consolidated Subscribers in the Township.

(b) To enable the Township to utilize the EG Channel, the Township shall select one (1) location within the Township’s boundaries and Consolidated shall provide and install, within one hundred eighty (180) days of a written request by the Township direct fiber links, including activation equipment capable of transmitting HD quality video and audio between the video origination location and the Consolidated headend such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the Township. This fiber link and equipment shall be collectively known as the “Return Line.”

(c) Any expenditure made in connection with the construction and maintenance of the Return Line shall be born solely by Consolidated. The Township and Consolidated further agree that all costs incurred by Consolidated for supporting such EG Channel, including any and all equipment and EG support grants may be designated as “costs of franchise requirements” or “external costs” as defined by the FCC and Consolidated reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(d) Consolidated shall be responsible for maintaining the Return Line to the video origination point of the EG Channel so long as the Township provides Consolidated with access to such location and access to the EG Channel equipment within such location. Consolidated shall provide, install and maintain in good working order the equipment and the cable necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. Consolidated shall maintain the EG Channel in accordance with the same FCC technical specifications that are comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable system, except that it shall not be responsible for the technical signal quality of programming produced by any EG channel programmer.

(e) At the time that the Township and/or its designee begin to produce EG programming in high definition (“HD”) format, Consolidated shall distribute the EG channel signals in HD format through the cable system. Consolidated shall distribute the signals in HD format within sixty (60) days of receipt of notice from the Township that the Township and/or its designee has upgraded its PEG production equipment to HD format.

(f) The Township or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channel. The Township and



Consolidated agree to work cooperatively in implementing the EG channel through such means and in such manner as shall be mutually satisfactory.

(g) Within one hundred eighty (180) days of a written request by the Township, Consolidated shall, at its own cost and expense, relocate the EG origination site and the associated Return Line one time during the term of this Agreement as follows: (i) the new location must be located within two hundred fifty (250) feet of Consolidated's main distribution line; (ii) Consolidated's obligation shall be subject to the same terms and conditions that apply to the original EG origination site in this Section; and (iii) the Township shall provide access to such site at least ninety (90) days prior to anticipated use of the new EG origination site. The timeline for relocation of the EG origination site shall be subject to the timely granting of any and all required permits, walk-out, make ready, and the detection of all underground utilities.

(h) Consolidated shall include the EG Channels and programming information in all electronic program menus in a substantially similar manner and placement as the broadcast channels, including individual program listings and descriptions as provided by the Township.

(i) In the event the Township or its designee does not program any EG Channel, Consolidated may request the use of this channel subject to written approval by the Township. If the Township approves Consolidated's use of an EG Channel and, subsequent to such approval, the Township requests the utilization of the EG Channel being programmed by Consolidated, Consolidated shall relinquish such use no later than sixty (60) days after receipt of written notification from the Township that it requires such channel for educational and/or governmental use.

## **SECTION 8**

### **ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

#### **8.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the Township has reason to believe that Consolidated violated any provision of this Agreement, it shall notify Consolidated in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the Township does not notify Consolidated of any violation of this Agreement, it shall not operate as a waiver of any rights of the Township hereunder or pursuant to applicable law.

(b) Consolidated shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Consolidated must cure the violation shall be extended by the Township in writing for such additional time necessary to complete the cure, provided that Consolidated shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Township.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) and, in the Township's judgment, Consolidated has not taken reasonable steps to cure the violation, then the Township may deem that Consolidated is liable for liquidated damages and/or any other right or remedy and the Township's costs in accordance with Section 8.2.

## **8.2 LIQUIDATED DAMAGES**

(a) Because Consolidated's failure to comply with provisions of this Agreement will result in injury to the Township and because it will be difficult to measure the extent of such injury, the Township may assess liquidated damages against Consolidated in the amount of One hundred twenty-five (\$125.00) per day for each day the violation continues, provided Consolidated has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Consolidated or legal action by the Township, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Township. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The Township may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

## **8.3 REVOCAION**

(a) In addition to the other rights, powers and remedies retained by the Township under this Agreement, the Township reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Consolidated practiced any fraud or deceit upon the Township in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Consolidated repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Consolidated repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(4) Upon the appointment of a receiver or trustee to take over and conduct the business of Consolidated whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(i) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(ii) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all defaults under this Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Consolidated or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Consolidated shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the Township Council after an appropriate public hearing that shall afford Consolidated due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Consolidated at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Township, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Consolidated of mitigating circumstances or good cause for the existence of such grounds. The Township shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Consolidated.

#### **8.4 PERFORMANCE BOND**

(a) Consolidated shall obtain and maintain, within thirty (30) days of the Effective Date and throughout the term of this Agreement, at its sole cost and expense, a performance bond with a surety company licensed to do business in the Commonwealth of Pennsylvania to ensure Consolidated's faithful performance of its obligations. The North Hills Council of Governments shall serve as agent for the Township with respect to such performance bond. The performance bond shall provide that the Township may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the Township for Consolidated's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 8.1 and 8.2. An original copy of the bond shall be delivered to the Township.

(b) The performance bond shall be in the amount of Thirty Thousand Dollars (\$30,000). Consolidated shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the Township.

(c) The following municipalities shall be named on the performance bonds and shall have access to such bond in accordance with the terms and conditions of the bond and of this Agreement: Bradford Woods Borough, Franklin Park Borough, West Deer Township, Hampton

Township, Pine Township, Town of McCandless, Indiana Township, Richland Township, and Marshall Township.

## **8.5 INSURANCE**

(a) Consolidated shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the Township for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable system by Consolidated or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The Township, its officials and employees, shall be designated as additional insureds under each of the General Liability and Auto insurance policies required in this Section 8.5.

(c) Consolidated shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.5 and without submitting insurance certificates to the Township verifying that Consolidated has obtained such alternative insurance. Consolidated shall provide the Township with at least thirty (30) days prior written notice in the event the policies are cancelled or not renewed.

(d) Consolidated shall deliver to the Township Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the Township.

## **8.6 INDEMNIFICATION**

Consolidated shall indemnify, defend, save and hold harmless the Township, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Consolidated, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation,

upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Consolidated. The Township shall give Consolidated timely written notice of its obligation to indemnify and defend the Township. The obligation to indemnify, defend, save and hold the Township harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the Township determines that it is necessary for it to employ separate counsel, in addition to that provided by Consolidated, the cost for such separate counsel shall be the responsibility of the Township. Consolidated shall not indemnify the Township for any claims resulting solely from acts of willful misconduct or negligence on the part of the Township.

## **SECTION 9** **MISCELLANEOUS**

### **9.1 FORCE MAJEURE**

If for any reason of Force Majeure, Consolidated is unable in whole or in part to carry out its obligations hereunder, Consolidated shall not be deemed in violation of this Agreement during the continuance of such inability.

### **9.2 REMOVAL OF SYSTEM**

(a) Upon lawful termination or revocation of this Agreement, Consolidated shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at Consolidated's cost.

(b) During the term of the Agreement, if Consolidated decides to abandon or no longer use all or part of its Cable System, it shall give the Township written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The Township shall have the right to either require Consolidated to remove the property, remove the property itself and charge Consolidated with the costs related thereto, or transfer ownership of the property to the Township's designee provided fair market value is paid to Consolidated.

(c) Notwithstanding the above, Consolidated shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Consolidated from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

(d) If Consolidated abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Township,

at its option, may either: (1) designate another entity to operate the Cable System temporarily until Consolidated restores service under conditions acceptable to the Township, or until the Franchise is revoked and a new franchisee is selected by the Township; or (2) obtain an injunction requiring Consolidated to continue operations. If the Township designates another entity to operate the Cable System, Consolidated shall reimburse the Township or its designee for all reasonable costs, expenses and damages incurred. The Township shall be entitled to exercise options (1) and (2) above if:

(1) Consolidated fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the Township authorizes a longer interruption of service; or

(2) Consolidated, for any period, willfully and without cause, refuses to provide Cable Service in accordance with this Franchise.

### **9.3 NOTICES**

Every notice or payment to be served upon or made to the Township shall be sent to:

Township of West Deer  
Attn: Township Manager  
109 East Union Road  
Cheswick, PA 15024

The Township may specify any change of address in writing to Consolidated. Every notice to be served upon Consolidated shall be sent to:

Consolidated Communications Enterprise Services, Inc.  
121 South 17<sup>th</sup> St.  
Mattoon, IL 61938  
Attn: Contract Manager  
[contracts@consolidated.com](mailto:contracts@consolidated.com)  
Fax: 217-235-3590

With a copy to:

Consolidated Communications Enterprise Services, Inc.  
200 Vernon St.  
Roseville, CA  
Attn: Video Product Manager

Consolidated may specify any changes of address in writing to the Township. Each delivery to Consolidated or the Township shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **9.4 EQUAL EMPLOYMENT OPPORTUNITY**

Consolidated is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

#### **9.5 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

#### **9.6 GOVERNING LAW; VENUE**

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Allegheny, or in the United States District Court for the Western District of Pennsylvania.

#### **9.7 DISPUTE RESOLUTION**

##### **(a) Arbitration**

(1) Any dispute between the parties hereto, including but not limited to, disputes or controversies arising from or related to interpretation of this Agreement, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration shall be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

(2) The Township may initiate arbitration by resolution of its Township Council, while Consolidated may initiate arbitration by sending written notice to the Township.

(3) After arbitration has been initiated, the Township and Consolidated may agree that one arbitrator may conduct the arbitration and may mutually select such arbitrator.

(4) If either the Township or Consolidated does not consent to having one arbitrator conduct the arbitration or if the parties cannot agree upon the identity of such arbitrator, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(i) If the Township initiates arbitration, the Township shall select one arbitrator and Consolidated by written notice shall select one arbitrator within fifteen (15) days after receiving notice of the Township's selected arbitrator. If Consolidated initiates arbitration, it shall select one arbitrator, and the Township shall select one arbitrator within fifteen (15) days after receiving notice of the Consolidated's selected arbitrator.

(ii) The two selected arbitrators shall select a third arbitrator within fifteen (15) days after the appointment of the second arbitrator. If the two arbitrators are unable to

agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Allegheny County Court of Common Pleas.

(5) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than one hundred twenty (120) days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the Township and Consolidated. The arbitrator(s) shall make a written report to the Township and Consolidated on the final determination within thirty (30) days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. The arbitration shall be conducted according to the Uniform Arbitration Act.

(6) The Township and Consolidated shall share equally and separately the fees and costs of the arbitrator(s).

(b) Mediation

The Township and Consolidated agree that, should any dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, the dispute may be submitted to mediated negotiation prior to any party commencing arbitration or litigation. In such event, the Township and Consolidated may agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the Township and Consolidated are unable to successfully conclude the mediation within sixty (60) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other party. After written termination notice has been received by the other party, either party may request arbitration, as set forth in Section 9.7(a), or may pursue any other available legal remedies. All costs associated with mediation shall be borne, equally and separately, by the parties.

**9.8 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Consolidated nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the Township, provided that such consent shall not be unreasonably withheld.

(b) Neither Consolidated nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the Township, provided that such consent shall not be unreasonably withheld.

(c) Neither Consolidated nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five percent (25%) of its equitable ownership in



the Cable System without the prior written consent of the Township, provided that such consent shall not be unreasonably withheld.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Consolidated in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Consolidated.

(e) Consolidated shall make written application to the Township of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The Township shall have thirty (30) days from the receipt of FCC Form 394 to notify Consolidated of any additional information it needs to make an informed decision on the transfer or assignment. The Township shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the Township for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

## **9.9 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the Township and Consolidated. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein.

## **9.10 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

## **9.11 NO WAIVER OF RIGHTS**

No course of dealing between the Township and Consolidated, nor any delay on the part of the Township in exercising any rights hereunder, shall operate as a waiver of any such rights of the Township or acquiescence in the actions of Consolidated in contravention of such rights, except to the extent expressly waived by the Township.

**9.12 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the Township or Consolidated may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The Township and Consolidated may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the Township and Consolidated.

**9.13 COMPLIANCE WITH LAWS**

Consolidated shall comply with all federal, state and local laws and regulations.

**9.14 THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

**9.15 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Consolidated, the Township and their respective successors and assigns. This Agreement is authorized by Ordinance No. 407 dated \_\_\_\_\_, 2016 of Township Board of Supervisors.

[SIGNATURE PAGE TO FOLLOW]

WITNESS our hands and official seals to this Cable Franchise Agreement.

**TOWNSHIP OF WEST DEER**

By: \_\_\_\_\_

Name: Jeffrey D. Fleming

Title: Chairman

Date: \_\_\_\_\_

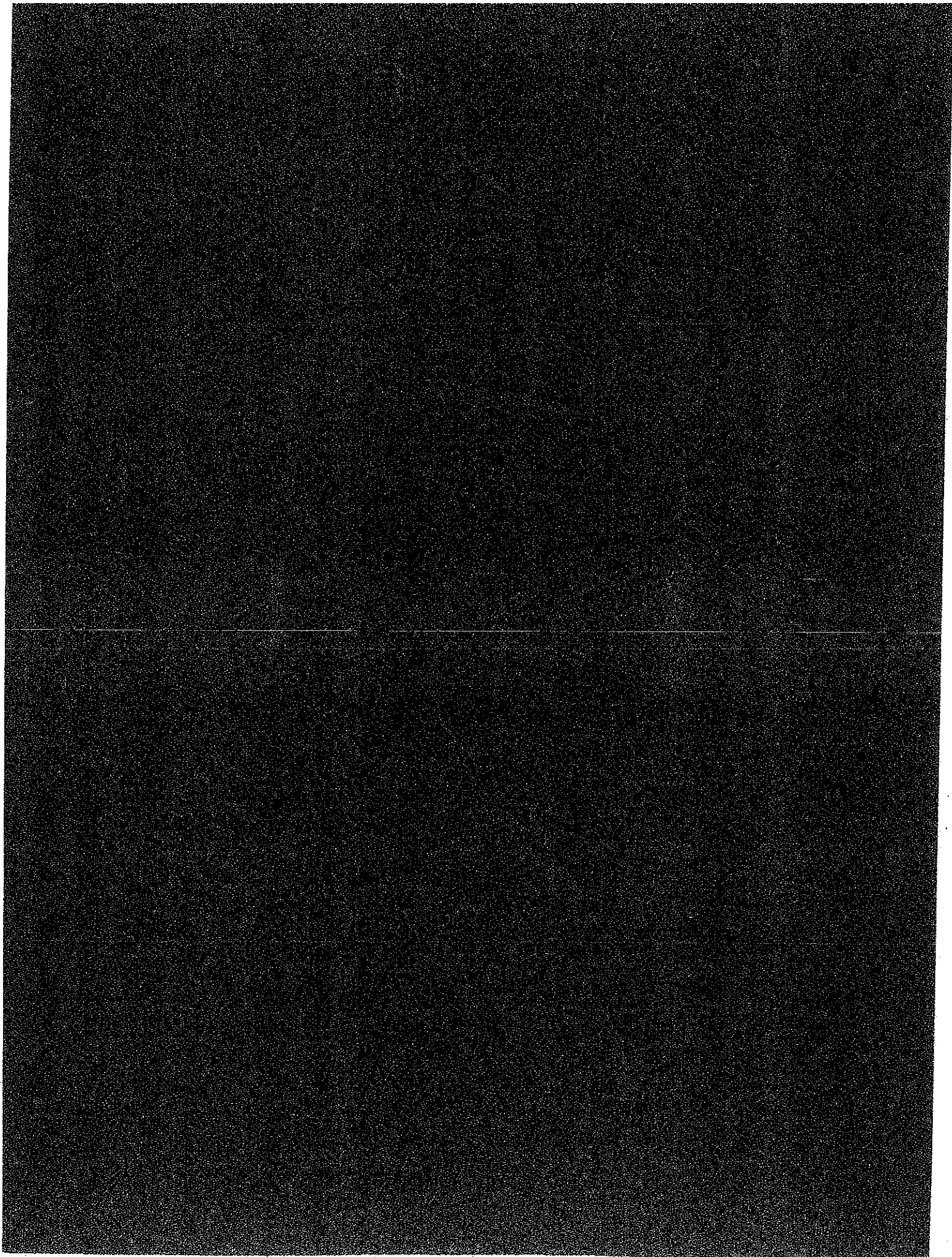
**CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**AUTHORIZE ADVERTISEMENT: ORDINANCE NO. 408**

THE SHORT TITLE OF THE ORDINANCE READS:

ORDINANCE NO. 408

AN ORDINANCE OF THE TOWNSHIP OF WEST DEER TO APPROVE, ADOPT, AND ENACT CODIFICATION; TO PROVIDE FOR THE REPEAL OF CERTAIN LEGISLATION NOT INCLUDED THEREIN; TO SAVE FROM REPEAL CERTAIN OTHER LEGISLATION NOT INCLUDED THEREIN; AND TO PROVIDE PENALTIES FOR TAMPERING WITH THE CODE.

ORDINANCE ATTACHED. THE ORDINANCE MUST BE ADVERTISED IN ACCORDANCE WITH THE LAW. THE BOARD WILL CONSIDER ADOPTION OF THE ORDINANCE AT THEIR APRIL 20, 2016 MEETING.

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO ADVERTISE ORDINANCE NO. 408 APPROVING, ADOPTING, AND ENACTING CODIFICATION; TO PROVIDE FOR THE REPEAL OF CERTAIN LEGISLATION NOT INCLUDED THEREIN; TO SAVE FROM REPEAL CERTAIN OTHER LEGISLATION NOT INCLUDED THEREIN; AND TO PROVIDE PENALTIES FOR TAMPERING WITH THE CODE IN ACCORDANCE WITH ALL APPLICABLE LAWS.

MOTION    SECOND    AYES    NAYES

MR. GUERRE	___	___	___	___
MRS. ROMIG	___	___	___	___
MR. VAEREWYCK	___	___	___	___
DR. DISANTI	___	___	___	___
MR. FLORENTINE	___	___	___	___
MRS. HOLLIBAUGH	___	___	___	___
MR. FLEMING	___	___	___	___

20

**OFFICIAL**

**WEST DEER TOWNSHIP  
County of Allegheny  
Commonwealth of Pennsylvania**

**ORDINANCE NO. 408**

**AN ORDINANCE OF THE TOWNSHIP OF WEST DEER TO APPROVE, ADOPT, AND ENACT CODIFICATION; TO PROVIDE FOR THE REPEAL OF CERTAIN LEGISLATION NOT INCLUDED THEREIN; TO SAVE FROM REPEAL CERTAIN OTHER LEGISLATION NOT INCLUDED THEREIN; AND TO PROVIDE PENALTIES FOR TAMPERING WITH THE CODE.**

Be it enacted and ordained by the Board of Supervisors of the Township of West Deer, County of Allegheny, Commonwealth of Pennsylvania, and it is enacted and ordained as follows:

**ARTICLE I  
Adoption of Code**

**§ 1-1. Approval, adoption and enactment of Code.**

Pursuant to Article V of the Township of West Deer Home Rule Charter, the codification of a complete body of legislation for the Township of West Deer, County of Allegheny, Commonwealth of Pennsylvania, as revised, codified and consolidated into chapters, articles and sections by General Code, and consisting of Chapters 1 through 212, together with an Appendix, is hereby approved, adopted, ordained and enacted as a single ordinance of the Township of West Deer, which shall be known and is hereby designated as the "Code of the Township of West Deer," hereinafter referred to as the "Code."

**§ 1-2. Effect of Code on previous provisions.**

The provisions of this Code, insofar as they are substantively the same as those of ordinances and resolutions in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Board of Supervisors of the Township of West Deer, and it is the intention of said Board of Supervisors that each such provision contained within the Code is hereby reenacted and reaffirmed as it appears in said Code. Only such provisions of former ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3

below, and only new or changed provisions, as described in § 1-6 below, shall be deemed to be enacted from the effective date of this Code, as provided in § 1-15 below.

**§ 1-3. Inconsistent legislation repealed.**

- A. Repeal of inconsistent ordinances. Except as provided in § 1-4, Legislation saved from repeal; matters not affected by repeal, below, all ordinances or parts of ordinances inconsistent with the provisions contained in the Code adopted by this ordinance are hereby repealed as of the effective date given in § 1-15; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Township of West Deer which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.
- B. Repeal of specific ordinances. The Board of Supervisors of the Township of West Deer has determined that the following ordinances are no longer in effect and hereby specifically repeals the following legislation:
- (1) Former Ch. 1, General Provisions, Article III, Violations and Penalties (Ord. No. 268), is hereby repealed as superseded by state law.
  - (2) Former Ch. 77, Animals, Article II, Abandonment (Ord. No. 15), is hereby repealed as superseded by state law.
  - (3) Former Ch. 88, Building Construction (Ord. No. 306), is hereby repealed as superseded by the adoption of the Uniform Construction Code.
  - (4) Former Ch. 102, Disorderly Conduct (Ord. No. 240), is hereby repealed as superseded by state law.
  - (5) Former Ch. 179, Smoking (Ord. No. 257, as amended by Ord. No. 265), is hereby repealed as superseded by county law.
  - (6) Former Ch. 189, Taxation, Article XII, New Home Construction Tax Abatement Program (Ord. No. 264, as amended by Ord. No. 285), is hereby repealed as obsolete.
  - (7) Former Ch. 189, Taxation, Article XII, Real Property Tax Exemptions in Keystone Opportunity Zone (Ord. No. 279), is hereby repealed as obsolete.
  - (8) Former Ch. 193, Trailers and Campgrounds (Ord. No. 6), is hereby repealed as superseded by the new zoning.

**§ 1-4. Legislation saved from repeal; matters not affected by repeal.**

The adoption of this Code and the repeal of ordinances provided for in § 1-3 of this ordinance shall not affect the following ordinances, rights and obligations, which are hereby expressly saved from repeal; provided, however, that the repeal of ordinances pursuant to § 1-3 or the saving from repeal of ordinances pursuant to this section shall not be construed so as to revive any ordinance previously repealed, superseded or no longer of any effect:

- A. Any ordinance adopted subsequent to March 11, 2015.
- B. Any right or liability established, accrued or incurred under any legislative provision of the Township prior to the effective date of this ordinance or any action or proceeding brought for the enforcement of such right or liability or any cause of action acquired or existing.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision of the Township or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this ordinance, brought pursuant to any legislative provision of the Township.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Township or any lawful contract, obligation or agreement.
- F. Any ordinance appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Township or other instruments or evidence of the Township's indebtedness.
- G. Any ordinance adopting an annual budget or establishing an annual tax rate.
- H. Any ordinance providing for the levy, imposition or collection of special taxes, assessments or charges.
- I. Any ordinance authorizing the purchase, sale, lease or transfer of property or acquiring property by acceptance of deed, condemnation or exercise of eminent domain.
- J. Any ordinance annexing land to the Township.
- K. Any ordinance providing for or requiring the construction or reconstruction or opening of sidewalks, curbs and gutters.
- L. Any ordinance or part of an ordinance providing for laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road,



highway, sidewalk, park or other public place or property or designating various streets as public highways.

- M. Any ordinance establishing water, sewer or other special purpose districts and designating the boundaries thereof; providing for a system of sewers or water supply lines; or providing for the construction, extension, dedication, acceptance or abandonment of any part of a system of sewers or water supply lines.
- N. Any ordinance providing for the making of public improvements.
- O. Any ordinance providing for the salaries and compensation of officers and employees of the Township or setting the bond of any officer or employee.
- P. Any ordinance concerning changes and amendments to the Zoning Map.
- Q. Any ordinance relating to or establishing a pension plan or pension fund for municipal employees.
- R. Any ordinance or portion of an ordinance establishing a specific fee amount for any license, permit or service obtained from the Township.
- S. Any currently effective ordinance providing for intergovernmental cooperation or establishing an intermunicipal agreement.
- T. Any regulations regarding vehicles and traffic.

**§ 1-5. Inclusion of new legislation prior to adoption of Code.**

All ordinances of a general and permanent nature adopted subsequent to the date given in § 1-4A and/or prior to the date of adoption of this ordinance are hereby deemed to be a part of the Code and shall, upon being printed, be included therein. Attested copies of all such ordinances shall be temporarily placed in the Code until printed supplements are included.

**§ 1-6. Changes and revisions in previously adopted legislation; new provisions.**

- A. Nonsubstantive changes. In compiling and preparing the ordinances and resolutions of the Township for adoption and revision as part of the Code, certain nonsubstantive grammatical and style changes were made in one or more of said ordinances and resolutions. It is the intention of the Board of Supervisors that all such changes be adopted as part of the Code as if the ordinances and resolutions so changed had been previously formally amended to read as such.
- B. Substantive changes and revisions. In addition to the changes and revisions described above, changes and revisions of a substantive nature, as set forth in Schedule A attached hereto and made a part hereof, are hereby made to various ordinances and resolutions included in the Code. These changes are enacted to

bring provisions into conformity with the desired policies of the Board of Supervisors, and it is the intent of the Board of Supervisors that all such changes be adopted as part of the Code as if the legislation so changed had been previously formally amended to read as such. All such changes and revisions shall be deemed to be in effect as of the effective date of the Code specified in § 1-15.

#### **§ 1-7. Interpretation of provisions.**

In interpreting and applying the provisions of the Code, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. Where the provisions of the Code impose greater restrictions or requirements than those of any statute, other ordinance, resolution or regulation, the provisions of the Code shall control. Where the provisions of any statute, other ordinance, resolution or regulation impose greater restrictions or requirements, the provisions of such statute, other ordinance, resolution or regulation shall control.

#### **§ 1-8. Titles and headings; editor's notes.**

- A. Chapter and article titles, headings and titles of sections and other divisions in the Code or in supplements made to the Code are inserted in the Code and may be inserted in supplements to the Code for the convenience of persons using the Code and are not part of the legislation.
- B. Editor's notes indicating sources of sections, giving other information or referring to the statutes or to other parts of the Code are inserted in the Code and may be inserted in supplements to the Code for the convenience of persons using the Code and are not part of the legislation.

#### **§ 1-9. Filing of copy of Code.**

At least one copy of the Code in a post-bound volume shall be filed with the Ordinance Book in the office of the Township Secretary and shall remain there for use and examination by the public. Upon adoption, such copy or copies shall be certified to by the Township Secretary, as provided by law, and such certified copy or copies shall remain on file in the office of the Township Secretary, available to persons desiring to examine the same during all times while said Code is in effect.

#### **§ 1-10. Amendments to Code.**

Any and all additions, deletions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intention of the Board of Supervisors to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such changes. Whenever such additions, deletions, amendments or supplements to the Code shall be adopted, they

shall thereafter be printed and, as provided hereunder, inserted in the post-bound book containing said Code as amendments and supplements thereto.

**§ 1-11. Code books to be kept up-to-date.**

It shall be the duty of the Township Secretary or someone authorized and directed by him or her to keep up-to-date the certified copy or copies of the book containing the Code required to be filed in the office of the Township Secretary for the use of the public. All changes in said Code and all legislation adopted by the Board of Supervisors subsequent to the effective date of this codification which the Board of Supervisors shall adopt specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new legislation are printed as supplements to said Code books, at which time such supplements shall be inserted therein.

**§ 1-12. Publication of notices.**

The Township Secretary, pursuant to law, shall cause to be published in the manner required a notice of the introduction of the Code in a newspaper of general circulation in the Township. The enactment and application of this ordinance, coupled with the publication of the notice of introduction, the availability of a copy or copies of the Code for inspection by the public and the filing of an attested copy of this ordinance with the county, as required by law, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

**§ 1-13. Altering or tampering with Code; violations and penalties.**

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, or to alter or tamper with the Code or any part or portion thereof in any manner whatsoever which will cause the law of the Township to be misrepresented thereby. Any person who violates or permits a violation of this section of this ordinance shall, upon being found liable therefor in a civil enforcement proceeding, pay a fine of not more than \$600, plus all court costs, including reasonable attorneys' fees, incurred by the Township in the enforcement of this chapter. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Township are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

**§ 1-14. Severability.**

The provisions of this ordinance and of the Code adopted hereby are severable, and if any clause, sentence, subsection, section, article, chapter or part thereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation and application to the clause, sentence, subsection,

section, article, chapter or part thereof rendered illegal, invalid or unconstitutional. It is hereby declared to be the intent of the Board of Supervisors that this ordinance and the Code would have been adopted if such illegal, invalid or unconstitutional clause, sentence, subsection, section, article, chapter or part thereof had not been included therein.

**§ 1-15. Effective date.**

All provisions of this ordinance and of the Code shall be in force and effect on and after 20 April, 2016.

ORDAINED AND ENACTED **this 20<sup>th</sup> day of April 2016.**

**ATTEST:**

**WEST DEER TOWNSHIP**

\_\_\_\_\_  
**Township Manager**

\_\_\_\_\_  
**Chairman of the Board of Supervisors**

Approved as to Form:

\_\_\_\_\_  
Township Solicitor

**CERTIFICATE**

I, the undersigned, hereby certify that the foregoing and attached is a true copy of an Ordinance which was duly enacted at a meeting of the Board of Supervisors of West Deer Township on 20 April 2016, and that at such meeting a quorum was present and acting throughout, after due notice to the members of the Board of Supervisors of West Deer Township and to the public and such meeting was at all times open to the public; that the Ordinance was duly recorded in the West Deer Township Minutes Book and that a summary thereof was published as required by law in a newspaper of general circulation in the Township. I further certify that the Township met the advance requirements of Act No. 1998-93 by advertising the date of the meeting and posting a notice of the meeting at the public meeting place of the Board of Supervisors; that the total number of members of the Board of Supervisors is seven; and the vote upon the Ordinance was called and duly recorded upon the minutes and that the members voted in the following manner:

Yes                      No                      Abstain                      Absent

Jeffrey D. Fleming, Chairman

Richard W. DiSanti, Jr., Vice Chair

Rick W. Florentine

Leonard Guerre

Shirley A. Hollibaugh

Joyce A. Romig

Gerry Vaerewyck

WITNESS my hand and the seal of the Township on this 20<sup>th</sup> day of April 2016.

[SEAL]

By: \_\_\_\_\_  
Daniel Mator  
Township Manager

## **Township of West Deer Code Adoption Ordinance**

### **Schedule A Specific Revisions at Time of Adoption of Code**

**A. Penalties.** Penalties throughout the Code are hereby standardized at the following maximums:

- (1) For violation of ordinances adopting building, housing, property maintenance, health, fire or public safety codes and for ordinances regulating water services, water pollution, air pollution and noise:

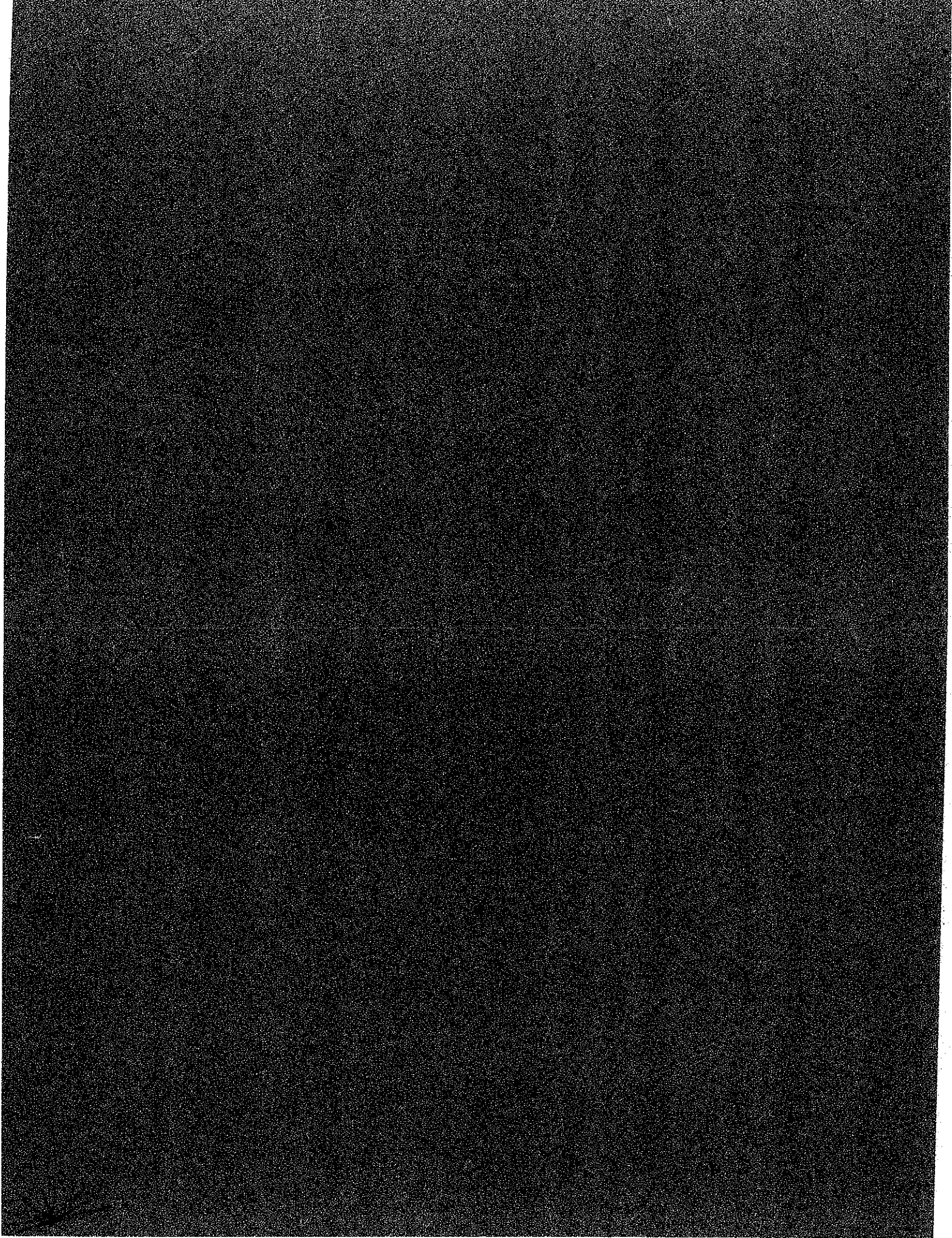
“Any person, firm or corporation who shall violate any provision of this chapter/article, upon conviction thereof in an action brought before a Magisterial District Judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000, plus costs, and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this chapter/article continues or each section of this chapter/article which shall be found to have been violated shall constitute a separate offense.”

- (2) For all other enactments, except for those enactments covered by state legislation that contains specific penalty provisions (such as the Vehicle Code, 75 Pa.C.S.A. §101 et seq., the Municipalities Planning Code, 53 P.S. §10101 et seq., for land use ordinances, the Sewage Facilities Act, 35 P.S. §750.1 et seq., for on-lot sewage disposal systems, and the Local Tax Enabling Act with regard to earned income tax ordinances):

“Any person, partnership or corporation who or which has violated or permitted the violation of any provision of this chapter/article, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, shall pay a judgment of not more than \$600, plus all court costs. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure, at which time, in addition to any penalties, the violator shall be liable for any attorneys’ fees and costs incurred by the Township. Each day that a violation continues or each section of this chapter/article which shall be found to have been violated shall constitute a separate violation.”

**B. Nomenclature.**

- (1) The following state/federal agency names are updated throughout:
    - (a) "Department of Environmental Resources" is changed to "Department of Environmental Protection."
    - (b) "Department of Community Affairs" is changed to "Department of Community and Economic Development."
    - (c) "District Justice" is changed to "Magisterial District Judge."
  - (2) References to the Township building official/building inspector/code enforcement officer, etc., are changed to "Building Code Official" throughout.
- C. Fees. Specific fees throughout the Code are removed and replaced with "as set forth from time to time by resolution of the Board of Supervisors."
- D. Ch. 77, Animals. The term "Dog Catcher" is hereby changed to "Animal Control Officer."
- E. Ch. 210, Zoning. References to the Sunshine Act are hereby amended to refer to 656 Pa.C.S.A. § 701 et seq.





**RESIGNATION: ZONING HEARING BOARD MEMBER**

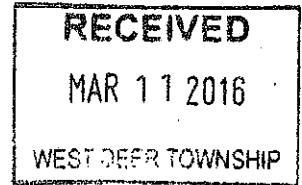
THE BOARD RECEIVED THE ATTACHED LETTER FROM DANIEL LIVINGSTON RESIGNING AS A MEMBER OF THE WEST DEER ZONING HEARING BOARD EFFECTIVE IMMEDIATELY.

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO ACCEPT THE RESIGNATION OF DANIEL LIVINGSTON FROM THE ZONING HEARING BOARD.

	MOTION	SECOND	AYES	NAYES
MR. FLORENTINE	___	___	___	___
MR. GUERRE	___	___	___	___
MR. VAEREWYCK	___	___	___	___
MRS. HOLLIBAUGH	___	___	___	___
DR. DISANTI	___	___	___	___
MRS. ROMIG	___	___	___	___
MR. FLEMING	___	___	___	___

**West Deer Township Board of Supervisors**  
**109 East Union RD**  
**Cheswick, PA 15024**



**Dear Members of the Board:**

**Thank you for the opportunity to serve my Township as a member of the Zoning Board. I have enjoyed the experience tremendously over the years, but recently the Board has failed to live up to its responsibility and accountability.**

**A good Zoning Board must hear all the evidence and then deliberate on it before voting on the issue. The decision made must serve both the Township and the residents involved. Of late we have not chosen this route but made decisions not in the best interests of our community, even going against the advice of counsel. The Zoning Board has failed to reorganize as of this date but has made decisions on zoning issues. The lack of strong organization and the constant resignations of other members have left a weakened Board without a framework for following the zoning code. I am sure this is not the right direction the Board should be taking.**

**Therefore in good conscience, I no longer wish to be a part of the Board. Effective immediately I offer my resignation to the Board of Supervisors. If in the future the Township needs my services I am willing and looking forward to serving again.**

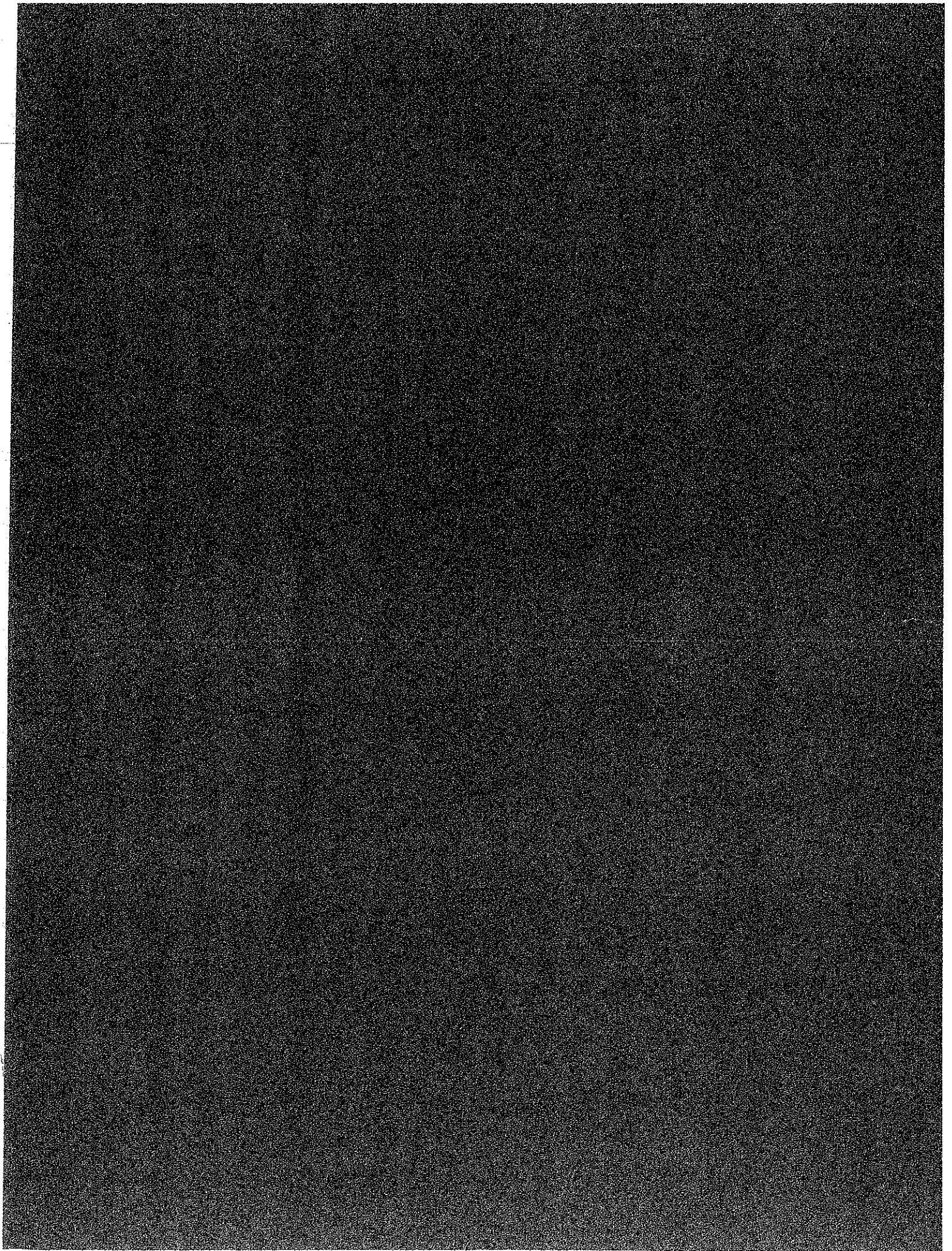
**Respectfully Yours,**

A handwritten signature in cursive script, appearing to read "Daniel Livingston".

**Daniel Livingston**

**03/10/16**

724-768-7399



**ZONING HEARING BOARD/APPOINTMENTS:**

DUE TO THE RECENT RESIGNATIONS OF GARY PIPER AND DANIEL LIVINGSTON AS MEMBERS OF THE ZONING HEARING BOARD, THE TOWNSHIP ADVERTISED TO FILL THE VACANCIES.

THE BOARD RECEIVED THE ATTACHED LETTERS OF INTEREST:

- 1) JAMES G. SMULLIN
- 2) SCOTT WOLOSZYK
- 3) GEORGE HOLLIBAUGH

NOTE: BOTH SCOTT WOLOSZYK AND GEORGE HOLLIBAUGH REQUESTED APPOINTMENT TO THE ALTERNATE POSITION, BUT THAT WAS PRIOR TO MR. LIVINGSTON'S RESIGNATION. THEY WILL BE CONTACTED AND – IF THEY SHOW INTEREST IN THE FULL POSITION – THE BOARD WILL BE NOTIFIED PRIOR TO THE VOTE.

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO APPOINT \_\_\_\_\_ AS A MEMBER OF THE ZONING HEARING BOARD TO FILL THE UNEXPIRED TERM OF GARY PIPER. TERM TO EXPIRE: DECEMBER 31, 2020.

	MOTION	SECOND	AYES	NAYES
MR. VAEREWYCK	___	___	___	___
DR. DISANTI	___	___	___	___
MR. FLORENTINE	___	___	___	___
MRS. HOLLIBAUGH	___	___	___	___
MR. GUERRE	___	___	___	___
MRS. ROMIG	___	___	___	___
MR. FLEMING	___	___	___	___

CON'T NEXT PAGE

22

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO APPOINT \_\_\_\_\_ AS A MEMBER OF THE ZONING HEARING BOARD TO FILL THE UNEXPIRED TERM OF DANIEL LIVINGSTON. TERM TO EXPIRE: DECEMBER 31, 2017.

	MOTION	SECOND	AYES	NAYES
DR. DISANTI	___	___	___	___
MR. FLORENTINE	___	___	___	___
MRS. HOLLIBAUGH	___	___	___	___
MR. GUERRE	___	___	___	___
MRS. ROMIG	___	___	___	___
MR. VAEREWYCK	___	___	___	___
MR. FLEMING	___	___	___	___

**ALTERNATE/ZONING HEARING BOARD:**

WHAT ACTION DOES THE BOARD WISH TO TAKE.

I MOVE TO APPOINT \_\_\_\_\_ AS AN ALTERNATE MEMBER TO THE ZONING HEARING BOARD. TERM TO EXPIRE: DECEMBER 31, 2016

	MOTION	SECOND	AYES	NAYES
MR. GUERRE	___	___	___	___
MR. VAEREWYCK	___	___	___	___
MRS. HOLLIBAUGH	___	___	___	___
DR. DISANTI	___	___	___	___
MRS. ROMIG	___	___	___	___
MR. FLORENTINE	___	___	___	___
MR. FLEMING	___	___	___	___

# Smullin Asphalt

1788 Saxonburg Blvd. Tarentum, PA 15084  
Phone: 724-265-1939 or 412-486-2222 Fax: 724-265-3607  
[smullinasphalt@gmail.com](mailto:smullinasphalt@gmail.com) / PA# 070740

RECEIVED

FEB 23 2016

WEST DEER TOWNSHIP

February 22, 2016

West Deer Township Board of Supervisors  
109 E. Union Road  
Cheswick, PA 15024  
Phone: 724-265-3680

Re: Vacant position on Zoning Hearing Board.

Attention: Board of Supervisors

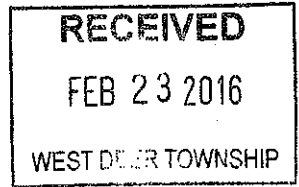
Due to the recent resignation of Gary Piper from the Zoning Hearing Board, I would like the opportunity to fill this full time position.

Currently I am serving as an alternate on the Zoning Hearing Board.

Sincerely,



James G. Smullin



February 21, 2016

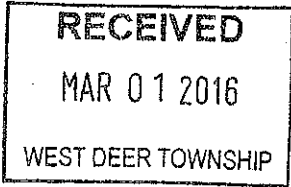
To: The Board of Supervisors

I am interested in applying for the vacancy on the zoning Hearing Board at the alternate position.  
Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Scott A. Woloszyk".

Scott A. Woloszyk



George Hollibaugh  
390 W Starz rd.  
Gibsonia, Pa. 15044

West Deer Twp.  
Supervisors

Zoning Hearing Board appointment alternate.

I would like to apply for the Alternate position. I have served many years on Planning Com.  
And also 8 years as Twp. Supervisor.

Thank you

George Hollibaugh

A handwritten signature in cursive script that reads "George Hollibaugh".

March 1 2016



**2016**

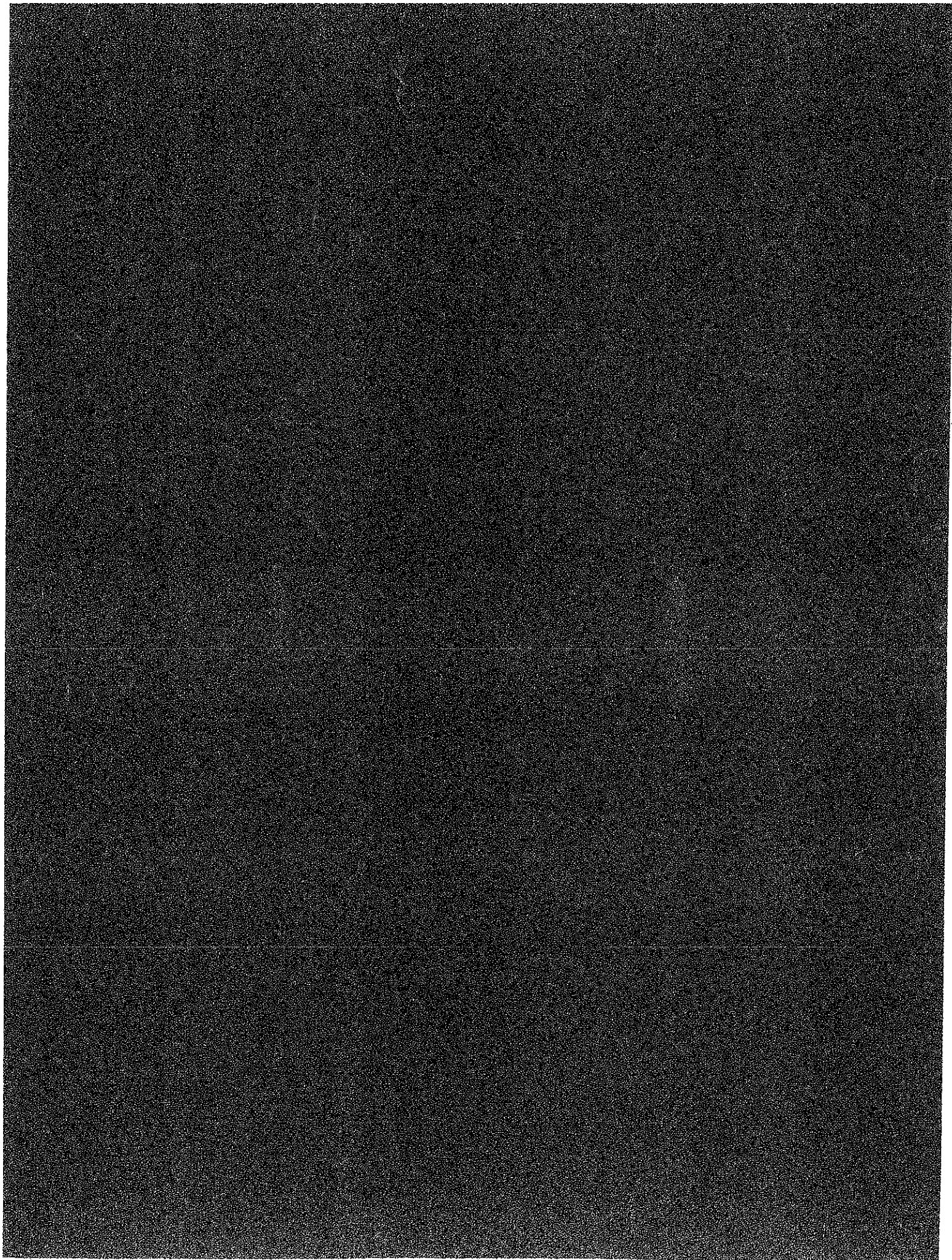
**WEST DEER TOWNSHIP**

**ZONING HEARING BOARD: 5 Year Terms:**

**MEMBERS:**

**TERM EXPIRES:**

Neil Tristani	12-31-2016
RESIGNED--Daniel Livingston	12-31-2017
Sean Parkinson	12-31-2018
Joseph D. Gizienski	12-31-2019
RESIGNED -- Gary W. Piper	12-31-2020
ALTERNATE – James Smullin	12-31-2016



**COMMITTEE REPORTS:**

**Engineering & Public Works Committee:**

Chairman – Mr. Florentine

**Financial, Legal & Human Resources Committee:**

Chairman – Dr. DiSanti

**EMS Oversight Committee:**

Chairman – Mr. Vaerewyck

**OLD BUSINESS**

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**NEW BUSINESS**

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**SET AGENDA / Regular Business Meeting**  
April 20, 2016

6:00 p.m. – Public Hearing/Conditional Use  
6:30 p.m. – Regular Business Meeting

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Executive Session Held
5. Registered Comments from the Public
6. Comments from the Public
7. Accept Minutes
8. Monthly Financial Report
  - A. Finance Officer's Report
  - B. List of Bills
  - C. Utilities and Payroll
  - D. Tax Refunds
9. Presentation—Michael Foreman/DCED – Home Rule Charter
10. Police Chief's Report
11. Building Inspector/Code Enforcement Officer's Report
12. Report from the Parks & Recreation Board
13. Engineer's Report
14. Deer Lakes Park Restrooms
15. 2016 Nike Site Program
16. Employment Agreements
17. Ordinance 408 : Code Ordinance
18. MS4/Memorandum of Understanding
19. Old Business
20. New Business
21. Set Agenda/May 18, 2016
22. Comments from the Public
23. Adjournment

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**COMMENTS FROM THE PUBLIC**

THE BOARD WILL HEAR COMMENT ON AGENDA AND PUBLIC-RELATED ITEMS AT THIS TIME. PLEASE APPROACH THE MICROPHONE, CLEARLY STATE YOUR NAME AND ADDRESS, AND LIMIT YOUR COMMENTS TO FIVE (5) MINUTES.

**ADJOURNMENT**

I MOVE TO ADJOURN AT \_\_\_\_\_ P.M.

	MOTION	SECOND	AYES	NAYES
MRS. ROMIG	—	—	—	—
MR. GUERRE	—	—	—	—
MR. VAEREWYCK	—	—	—	—
MRS. HOLLIBAUGH	—	—	—	—
DR. DISANTI	—	—	—	—
MR. FLORENTINE	—	—	—	—
MR. FLEMING	—	—	—	—

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