

## RIGHT-OF-WAY USE AGREEMENT

**T**HIS RIGHT-OF-WAY USE AGREEMENT (this "Use Agreement") is dated as of \_\_\_\_\_, 2014 (the "Effective Date"), and entered into by and between the **VILLAGE OF MATINECOCK**, a New York municipal corporation (the "Village"), and **NY-CLEC LLC**, a Delaware Limited Liability Company ("Crown Castle" or "Crown").

### RECITALS

A. Crown owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the New York State Public Service Commission, a fiber-based telecommunications Network or Networks (as defined below) serving Crown's wireless carrier customers and utilizing microcellular optical repeater Equipment (as defined below) certified by the Federal Communications Commission.

B. For purpose of operating the Network, Crown wishes to locate, place, attach, install, operate, control, maintain, upgrade and enhance Equipment in the Public Way (as defined below) on facilities owned by the Village, as well as on facilities owned by third parties therein.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**1 DEFINITIONS.** The following definitions shall apply generally to the provisions of this Use Agreement:

**1.1 Village.** ("Village") shall mean the Village of Matinecock, New York.

**1.2 Crown Castle or Crown.** "Crown Castle" or "Crown" shall mean NY-CLEC LLC, a Delaware Limited Liability Company and its lawful successors, assigns, and transferees.

**1.3 Decorative Streetlight Pole.** "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

**1.4 Equipment.** "Equipment" means the optical repeaters, DWDM and CWDM multiplexers, antennae, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by Crown hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as **Exhibit A** and incorporated herein by reference.

**1.5 Fee.** "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the Village lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

**1.6 Gross Revenue.** "Gross Revenue" shall mean and include all recurring revenues received by Crown for the provision of RF telecommunications transport services, either directly by Crown or

indirectly through a reseller, if any, to customers of such services wholly consummated within the Village. Gross Revenue shall not include any revenues received by Crown for the construction of network facilities in the Village. "Adjusted Gross Revenue" shall include offset for: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (exclusive of the Right-of-Way Use Fee paid to the Village provided herein); (b) retail discounts or other promotions; (c) non-collectable amounts due Crown or its customers; (d) refunds or rebates; and (e) non-operating revenues such as interest income or gain from the sale of an asset.

**1.7 ILEC.** "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the Village.

**1.8 Installation Date.** "Installation Date" shall mean the date that the first Equipment is installed by Crown pursuant to this Use Agreement.

**1.9 Laws.** "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Village or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

**1.10 Municipal Facilities.** "Municipal Facilities" means Village-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, or other Village-owned structures located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

**1.11 Network.** "Network" or collectively "Networks" means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by Crown to serve its wireless carrier customers in the Village.

**1.12 Public Way.** "Public Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the Village. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the Village, except as provided by applicable Laws or pursuant to an agreement between the Village and any such person or entity.

**1.13 PSC.** "PSC" means the New York State Public Service Commission.

**1.14 Services.** "Services" means the RF transport and other telecommunications services provided through the Network by Crown to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PSC.

**1.15 Streetlight Pole.** "Streetlight Pole" shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for streetlighting purposes.

**2 TERM.** This Use Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless Crown notifies the Village of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

**3 SCOPE OF USE AGREEMENT.** Any and all rights expressly granted to Crown under this Use Agreement, which shall be exercised at Crown's sole cost and expense, shall be subject to the prior and continuing right of the Village under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Crown a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the Village except that it is agreed that no zoning or planning board permit, variance, conditional use permit or site plan permit, or their equivalent under the Village's ordinances, codes or laws, shall be required for the installation of Crown's Equipment installed in the Public Way and/or on Municipal Facilities, unless such a process has been required for the placement of all communications facilities and equipment in the Public Way by all other telecommunications providers, including but not limited to the ILEC and local cable provider(s).

**3.1 Attachment to Municipal Facilities.** The Village hereby authorizes and permits Crown to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. In addition, subject to the provisions of § 4.5 below, Crown shall have the right to draw electricity for the operation of the Equipment from the power source associated with each such attachment to Municipal Facilities. A denial of an application for the attachment of Equipment to Municipal Facilities shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of Crown's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in **Exhibit A**.

**3.2 Attachment to Third-Party Property.** Subject to obtaining the permission of the owner(s) of the affected property, the Village hereby authorizes and permits Crown to enter upon the Public Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Public Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, Crown shall furnish to the Village evidence that Crown has entered into the appropriate pole-attachment agreement required pursuant to N.Y. C.L.S. Pub. Ser. § 119-a. A denial of an application for the attachment of Equipment to third-party-owned poles or structures in the Public Way shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of Crown's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in **Exhibit A**. Where third-party property is not available for attachment of Equipment, Crown may install its own utility poles in the Public Way, consistent with the requirements that the Village imposes on similar installations made by other utilities that use and occupy the Public Way.

**3.3 Provision of Dark Fiber to the Village.** Crown agrees that at all times during the term of this Use Agreement it shall reserve four (4) strands of unlit (dark) fiber owned or operated by Crown in the Village for the Village's exclusive use in operating any noncommercial data network or communications function, so long as the fiber is located within Crown's planned deployment routes.

**3.4 Preference for Municipal Facilities.** In any situation where Crown has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, Crown agrees to attach to the Municipal Facilities, provided that (i) such Municipal Facilities are at least equally suitable functionally for the operation of the Network and (ii) the rental fee and installation

costs associated with such attachment over the length of the term are equal to or less than the fee or cost to Crown of attaching to the alternative third-party-owned property.

**3.5 No Interference.** Crown in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement. The Village agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises the Village may enter into after the Effective Date with other information or communications providers and carriers.

**3.6 Compliance with Laws.** Crown shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

**4 COMPENSATION; UTILITY CHARGES.** Crown shall be solely responsible for the payment of all lawful Fees in connection with Crown's performance under this Use Agreement, including those set forth below.

**4.1 Annual Fee.** In order to compensate the Village for Crown's entry upon and deployment within the Public Way and as compensation for the use of Municipal Facilities, Crown shall pay to the Village an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, if any, upon which Equipment has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Effective Date. The Village represents and covenants that the Village owns all Municipal Facilities for the use of which it is collecting from Crown the Annual Fee pursuant to this § 4.1.

**4.1.1 CPI Adjustment.** Effective commencing on the fifth (5<sup>th</sup>) anniversary of the Installation Date and continuing on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984=100) which occurred during the previous five-year period for the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area (MSA).

**4.2 Right-of-Way Use Fee.** In order to compensate the Village for Crown's entry upon and deployment of Equipment within the Public Way, Crown shall pay to the Village, on an annual basis, an amount equal to five percent (5%) of Adjusted Gross Revenues (the "Right-of-Way Fee"). The Right-of-Way Fee shall be payable for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. Crown shall make any payment of the Right-of-Way Fee that may be due and owing within forty-five (45) days after the first anniversary of the Effective Date and within the same period after each subsequent anniversary of the Effective Date. Within forty-five (45) days after the termination of this Use Agreement, the Right-of-Way Fee shall be paid for the period elapsing since the end of the last calendar year for which the Right-of-Way Fee has been paid. Crown shall furnish to the Village with each payment of the Right-of-Way Fee a statement, executed by an authorized officer of Crown or his or her designee, showing the amount of Adjusted Gross Revenues for the period covered by the payment. If Crown discovers any error in the amount of compensation due, the Village shall be paid within thirty (30) days of discovery of the

error or determination of the correct amount. Any overpayment to the Village through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the Village of any payment of the Right-of-Way Fee shall not be deemed to be a waiver by the Village of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the Village of any such payments preclude the Village from later establishing that a larger amount was actually due or from collecting any balance due to the Village.

**4.3 Accounting Matters.** Crown shall keep accurate books of account at its principal office in Canonsburg, PA, or such other location of its choosing for the purpose of determining the amounts due to the Village under §§ 4.1 and 4.2 above. The Village may inspect Crown's books of account relative to the Village at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the Village's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The Village agrees to hold in confidence any non-public information it learns from Crown to the fullest extent permitted by Law.

**4.4 Most-Favored Municipality.** Should Crown after the parties' execution and delivery of this Agreement enter into an attachment or franchise agreement with another municipality of the same size or smaller than the Village in the same County (excluding New York City), which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the Village's opinion substantially superior to those in this Agreement, the Village shall have the right to require that Crown modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise.

**4.5 Electricity Charges.** Crown shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment' usage of electricity and applicable tariffs.

**5 CONSTRUCTION.** Crown shall comply with all applicable federal, State, and Village codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Crown's Equipment installed in the Public Way and on Municipal Facilities in the Village. Crown shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the Village for each location.

**5.1 Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, Crown shall, if required under applicable Village ordinances, apply for the appropriate permits and pay any standard and customary permit fees, so long as the permit fees and process that the Village requests of Crown are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). In the case of Third Party attachments (to existing utility infrastructure), Crown agrees to provide the Village with a list of proposed attachments in advance of its deployment to the Village and, the Village agrees to use reasonable efforts to review and approve Crown's list of proposed attachments to Third Party, utility infrastructure within thirty (30) days of submission, and if no comment is received within thirty (30) days, the application no further action will be required prior to Crown's installation. The Village agrees to use reasonable efforts to review and approve Crown's applications within thirty (30) days of submission, and if no comment is received within thirty (30) days, the application will be presumed to be acceptable.

**5.2 Location of Equipment.** The proposed locations of Crown's planned initial installation of Equipment is attached to this Agreement as **Exhibit B**. Approval of this Agreement shall also be

deemed approval of the specific Equipment locations listed in **Exhibit B**, however a permit must be obtained pursuant to the terms of §5.1 of this Use Agreement prior to commencing construction.

**5.2.1 Approval of Additional Locations.** Crown agrees to submit requests for additional locations for the installation of Equipment within the Village's Public Way to the Village Board for approval of location only. The Village agrees to use reasonable efforts to review and approve Crown's applications within sixty (60) days of submission, and if no comment is received within sixty (60) days, the application will be presumed to be acceptable.

**5.3 Equipment Size Restrictions.** Crown agrees to use the minimum Equipment Shroud size required to provide services for its customers. To comply with this provision, for the specific Equipment locations listed and approved in **Exhibit B**, Crown will initially install Equipment Shrouds that are 14 inches wide. However, when a larger Equipment Shroud is required for its customers, Crown may upgrade its Equipment Shroud without additional Village approvals so long as such cabinets do not exceed any dimension provided in **Exhibit A**.

**5.4 Relocation and Displacement of Equipment.** Crown understands and acknowledges that the Village may require Crown to relocate one or more of its Equipment installations. Crown shall at the Village's direction relocate such Equipment at Crown's sole cost and expense, whenever the Village reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a Village project; (b) because the Equipment is interfering with or adversely affecting proper operation of Village-owned light poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. In any such case, the Village shall use its best efforts to afford Crown a reasonably equivalent alternate location. If Crown shall fail to relocate any Equipment as requested by the Village within a reasonable time under the circumstances in accordance with the foregoing provision, the Village shall be entitled to relocate the Equipment at Crown's sole cost and expense, without further notice to Crown. To the extent the Village has actual knowledge thereof, the Village will attempt promptly to inform Crown of the displacement or removal of any pole on which any Equipment is located.

**5.5 Relocations at Crown's Request.** In the event Crown desires to relocate any Equipment from one Municipal Facility to another, Crown shall so advise the Village. The Village will use its best efforts to accommodate Crown by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

**5.6 Damage to Public Way.** Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way to be damaged, Crown, at its sole cost and expense, shall promptly repair and return the Public Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If Crown does not repair the site as just described, then the Village shall have the option, upon fifteen (15) days' prior written notice to Crown, to perform or cause to be performed such reasonable and necessary work on behalf of Crown and to charge Crown for the proposed costs to be incurred or the actual costs incurred by the Village at the Village's standard rates. Upon the receipt of a demand for payment by the Village, Crown shall promptly reimburse the Village for such costs.

**6 INDEMNIFICATION AND WAIVER.** Crown agrees to indemnify, defend, protect, and hold harmless the Village, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Crown's

activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the Village, its council or board members, officers, elected trustees, employees, agents, or contractors.

**6.1 Waiver of Claims.** Crown waives any and all claims, demands, causes of action, and rights it may assert against the Village on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the Village.

**6.2 Limitation of the Village's Liability.** Except as provided for above, the Village shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the Village, its employees, agents, or contractors

**6.3 Waiver of Punitive and Consequential Damages.** Both parties hereby waive the right to recover punitive or consequential damages from the other party.

**7 INSURANCE.** Crown shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Crown in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the Village, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of Crown's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Village has received at least thirty (30) days' advance written notice of such cancellation or change. Crown shall be responsible for notifying the Village of such change or cancellation.

**7.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Use Agreement, Crown shall file with the Village the required original certificate(s) of insurance with endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that the Village shall receive thirty (30) days' prior notice of cancellation;

(c) that Crown's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the Village may possess, including any self-insured retentions the Village may have; and any other insurance the Village does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(d) that Crown's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the Village.

The certificate(s) of insurance with notices shall be mailed to the Village at the address specified in § 8 below.

**7.2 Workers' Compensation Insurance.** Crown shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an

amount not less than One Million Dollars (\$1,000,000) and shall furnish the Village with a certificate showing proof of such coverage.

**7.3 Insurer Criteria.** Any insurance provider of Crown shall be admitted and authorized to do business in the State of New York and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**7.4 Severability of Interest.** Any self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the Village. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

**8 NOTICES.** All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

*if to the Village:*

**VILLAGE OF MATINECOCK**  
Attn: Mayor  
P.O. Box 706  
Locust Valley, NY 11560-0706

*if to Crown:*

**CROWN CASTLE NG EAST INC.**  
c/o Crown Castle USA Inc.  
2000 Corporate Drive  
Canonsburg, PA 15317-8564  
Attn: E. Blake Hawk, General Counsel, Legal Department

*with a copy which shall not constitute legal notice to:*

**CROWN CASTLE NG EAST INC.**  
695 River Oaks Parkway  
San Jose, CA 95134  
Attn: SCN Contracts Management

**8.1 Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**9 TERMINATION.** This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure

within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

**10 ASSIGNMENT.** This Use Agreement shall not be assigned by Crown without the express written consent of the Village, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Crown to a parent, subsidiary, or other affiliate of Crown or to any successor in interest or entity acquiring fifty-one percent (51%) or more of Crown's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the Village, provided that Crown reasonably demonstrates to the Village's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of Crown immediately prior to the transfer; (ii) any such transferee assumes all of Crown's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with Crown's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Network. Crown shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the Village of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Crown believes the Exempted Transfer Criteria have been satisfied. The Village Board of Trustees shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that Crown gives the Village its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the Village has received from Crown any and all additional information the Village may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the Village gives Crown notice in writing of the additional information the Village requires within fifteen (15) days after the Village's receipt of the original Exempted Transfer Notice. If the Village Board of Trustees fails to act upon Crown's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the Village Board of Trustees that Crown has in fact established compliance with the Exempted Transfer Criteria to the Village's satisfaction.

**11 MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

**11.1 Environmental Review.** Crown's facilities are "unlisted" but functionally equivalent to Type II actions under 6 N.Y.C.R.R. 617.5(c)(11). Crown agrees to comply with any rules pertaining to State Environmental Quality Review and to submit any required environmental forms for the Village's review and approval, so long as the review that the Village requires is the same that the Village requires of all other telecommunications providers, including but not limited to the ILEC and the cable provider(s), for their installation of any facilities or equipment in the Public Way.

**11.2 Nonexclusive Use.** Crown understands that this Use Agreement does not provide Crown with exclusive use of the Public Way or any Municipal Facility and that the Village shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and on Municipal Facilities. The Village agrees promptly to notify Crown of the receipt of a proposal for the installation of communications equipment or devices in the Public Way or on Municipal Facilities. In addition, the Village agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

**11.3 Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

**11.4 Severability of Provisions.** If any one or more of the provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

**11.5 Contacting Crown.** Crown shall be available to the staff employees of any Village department having jurisdiction over Crown's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The Village may contact by telephone the network control center operator at telephone number 1-866-639-8460 regarding such problems or complaints.

**11.6 Governing Law; Jurisdiction.** This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New York, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New York, in the County where the Village is located or in the United States District Court for the Eastern District of New York.

**11.7 Attorneys' Fees.** Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

**11.8 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**11.9 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above.

**11.10 Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

**11.11 Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

*Village:* **VILLAGE OF MATINECOCK**, a New York municipal corporation

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

\_\_\_\_\_  
[name typed]

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2014

*Crown:* **NY-CLEC LCC**, a Delaware corporation

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

**Robert D. Ward**

Its: President - DAS and Small Cell Networks

Date: \_\_\_\_\_, 2014

I HEREBY APPROVE the form and legality of the foregoing Use Agreement this \_\_\_\_\_, day of \_\_\_\_\_, 2014.

\_\_\_\_\_, Village Attorney

By \_\_\_\_\_  
\_\_\_\_\_, Deputy Village Attorney

**Exhibits:**

**Exhibit A** - Equipment

**Exhibit B** - Initial List of Equipment Locations



# *Exhibit A*

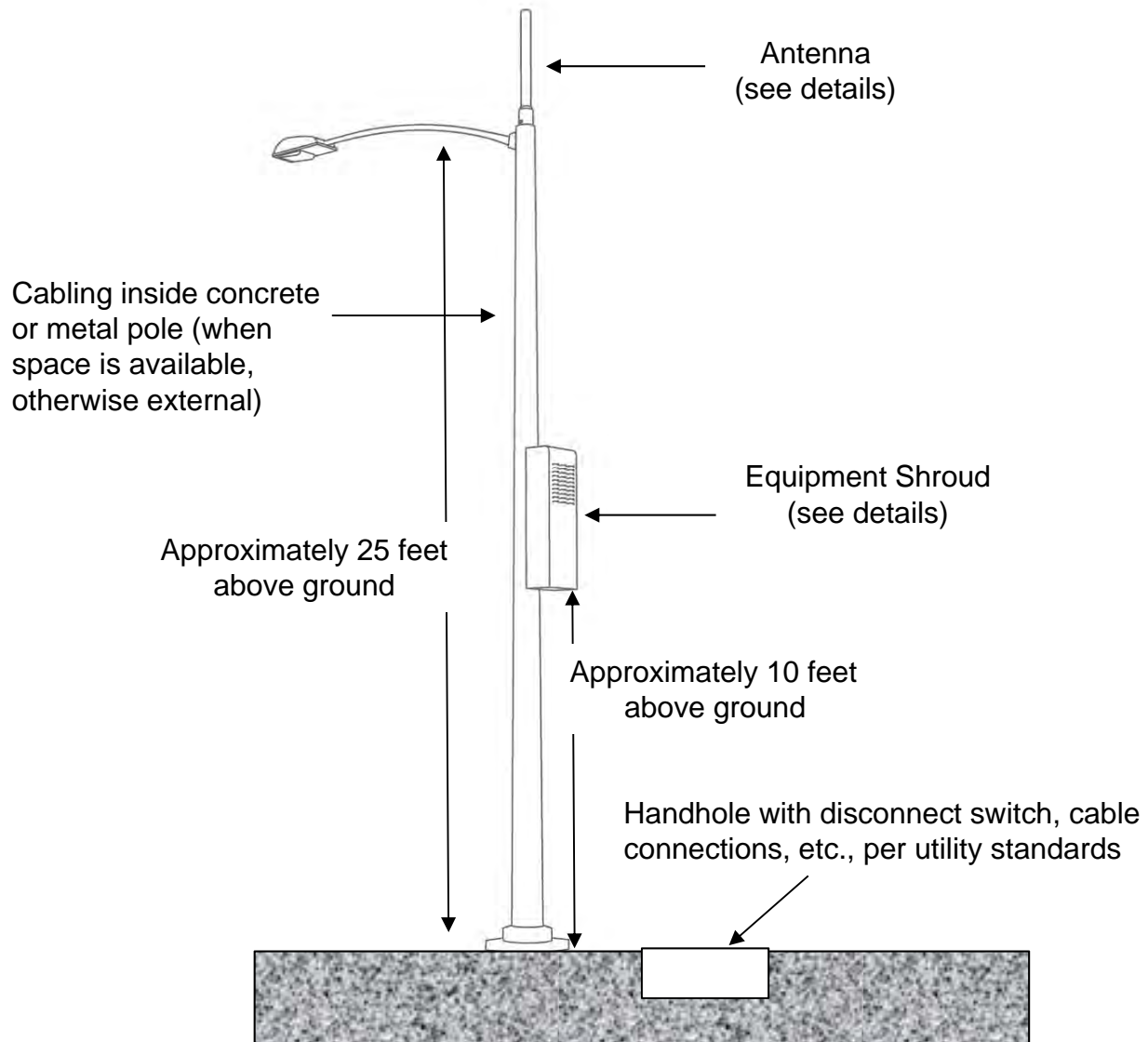
*May 29, 2013*



# Exhibit A

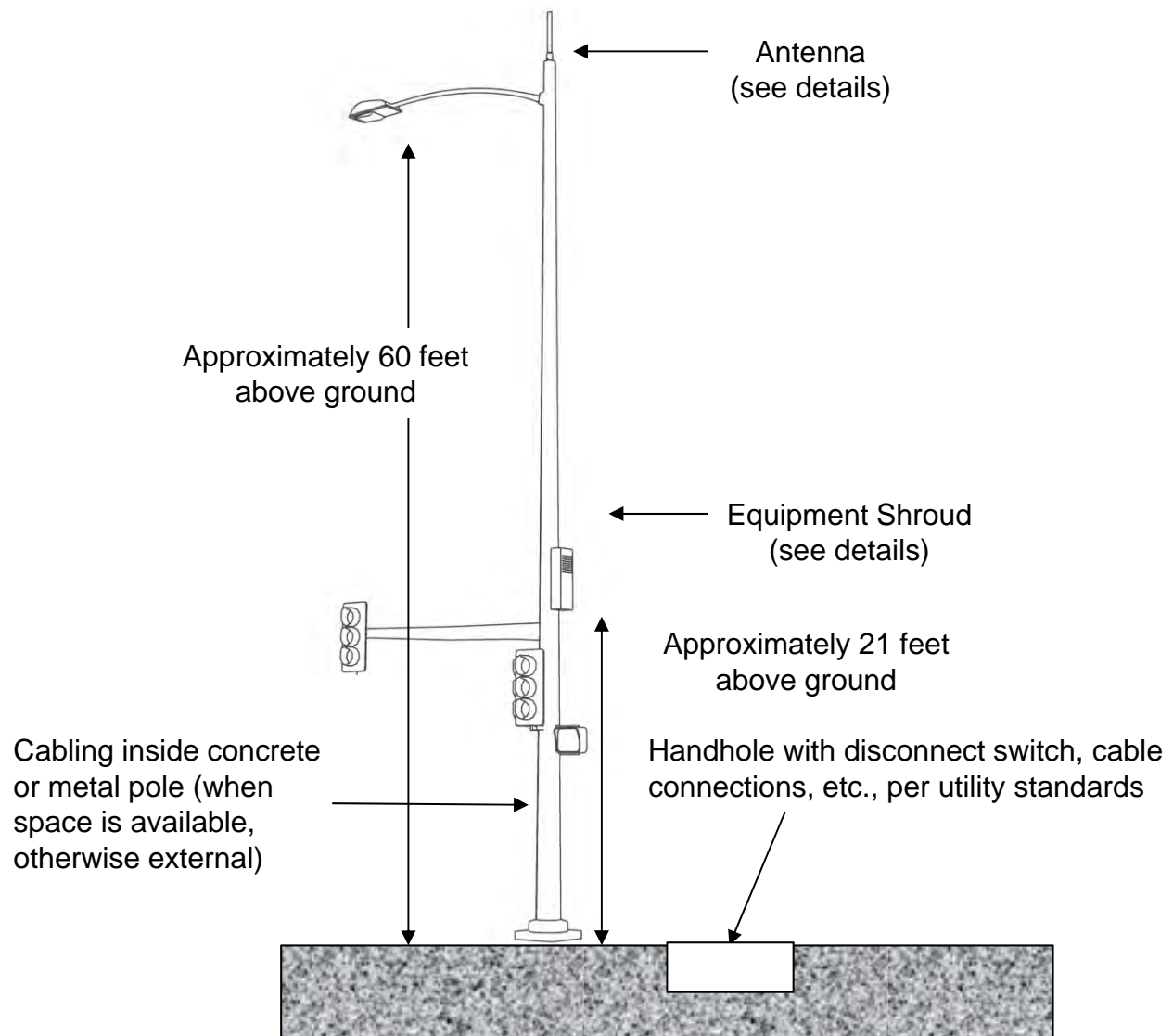
Note: The following equipment configurations and attachment scenarios are intended to be representative in nature. Actual installations may differ somewhat based upon various factors, including, but not limited to, the coverage and/or capacity objective, final equipment selection, field and pole conditions, existing pole attachments, utility construction standards, and future changes in technology.

# Street Light Pole



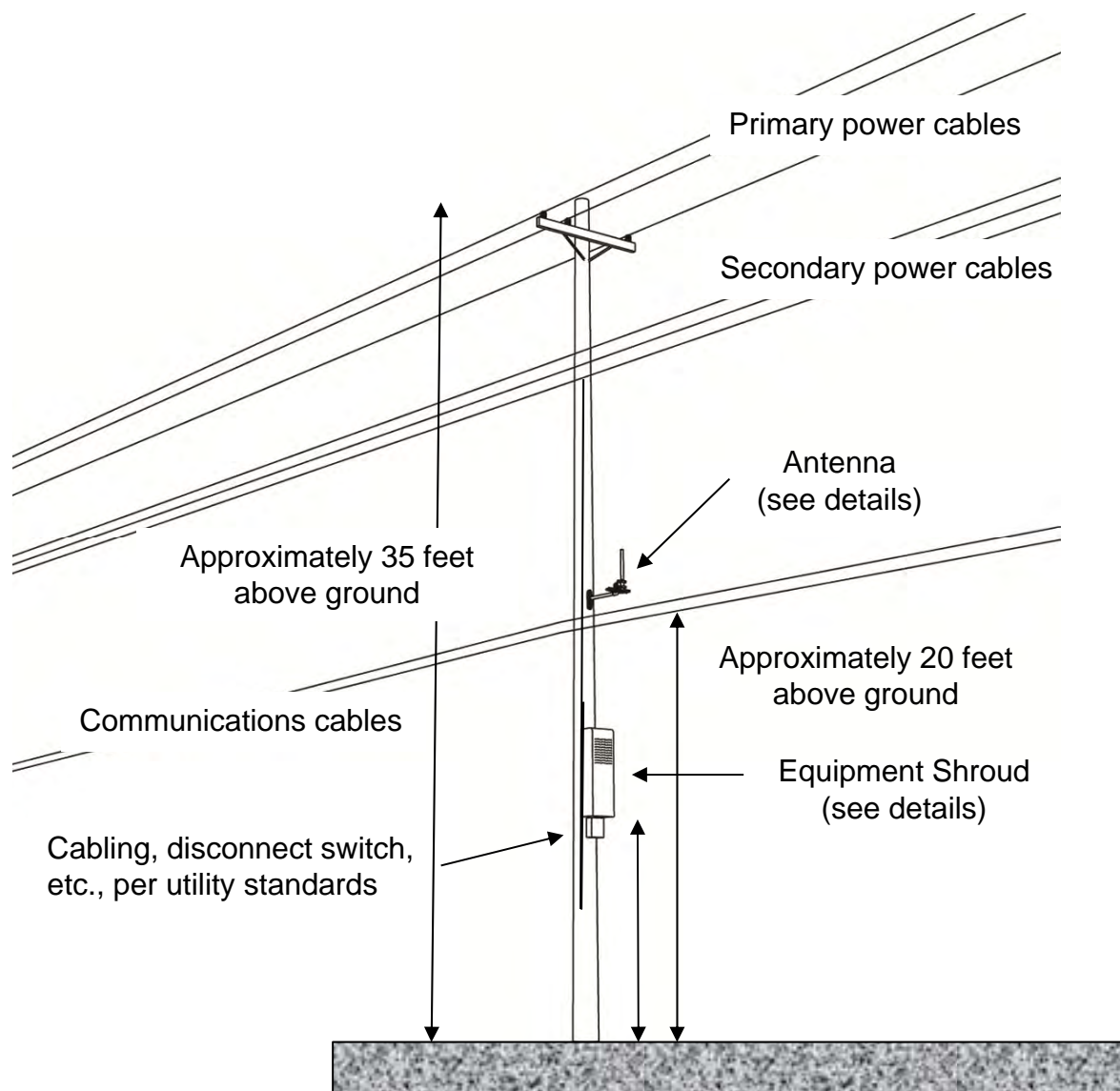
Scale approximate  
Construction will meet national and local utility safety codes

# Traffic Light Pole



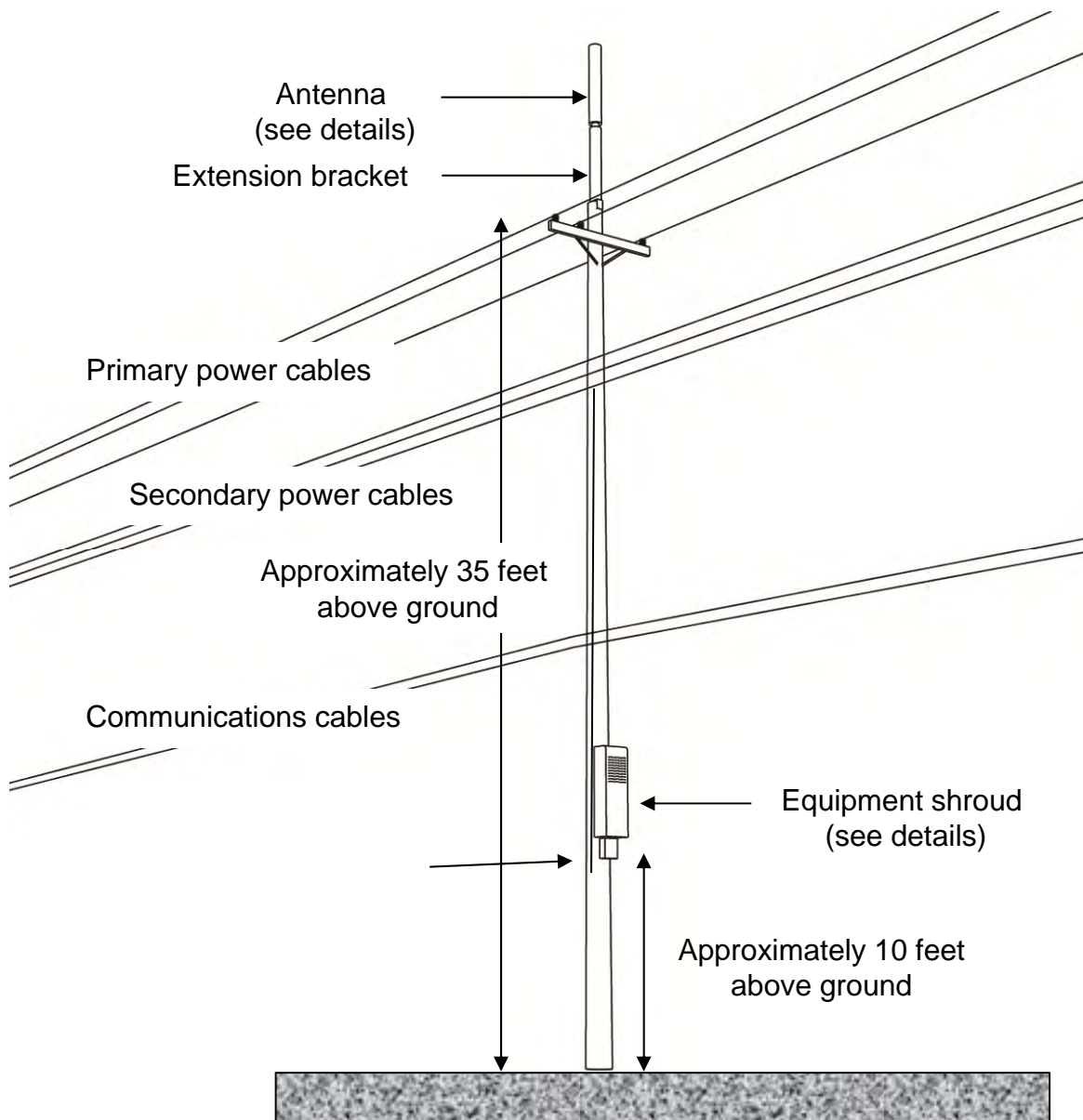
Scale approximate  
Construction will meet national and local utility safety codes

# Wooden Power Pole: Antenna in Communications Space



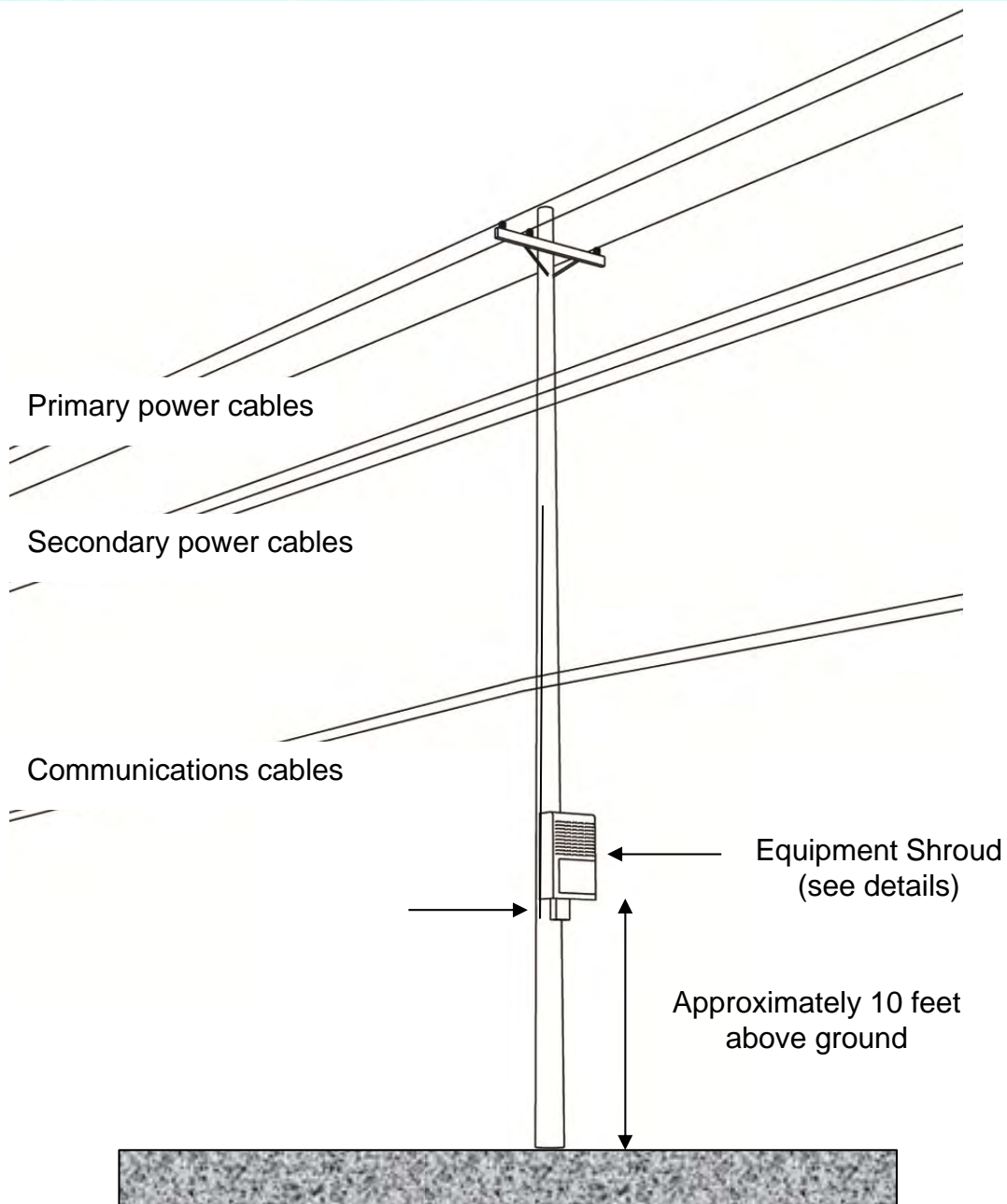
Scale approximate  
Construction will meet national and local utility safety codes

# Wooden Power Pole: Pole-top Antenna



Scale approximate  
Construction will meet national and local utility safety codes

# Wooden Power Pole: No Antenna

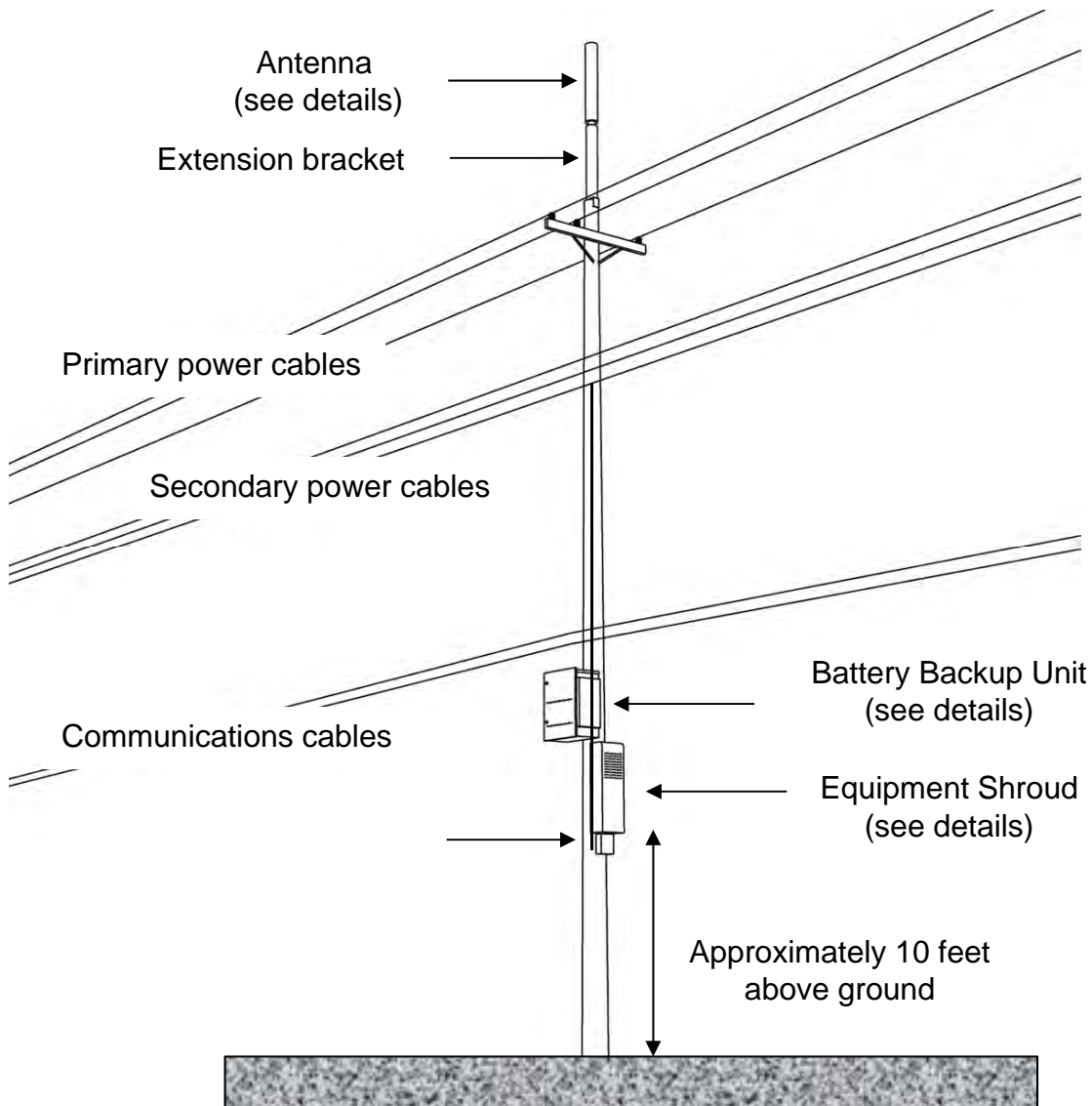


Scale approximate  
Construction will meet national and local utility safety codes

We Are Solutions



# Wooden Power Pole: Pole-top Antenna, 2 Equipment Shrouds

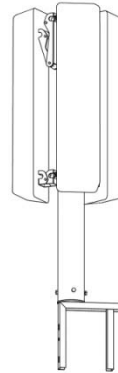


Scale approximate  
Construction will meet national and local utility safety codes

# Pole-top Antenna Designs



**Cylindrical-style antenna**  
24 to 50 inches high,  
2 to 10 inches in diameter



**Panel-style antenna(s)**  
each 24 to 58 inches high,  
8 to 12 inches wide,  
4 to 10 inches deep,  
Up to 3 panels per pole



**Cylindrical-style antenna**  
48 to 72 inches high,  
8 to 16 inches in diameter



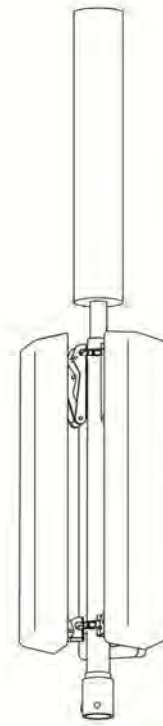
**Drum-style antenna**  
24 to 26 inches high,  
16 to 20 inches in diameter

Engineering and design determined on a site-by-site basis, some with extension bracket  
Scale approximate

# Pole-top Antenna Designs



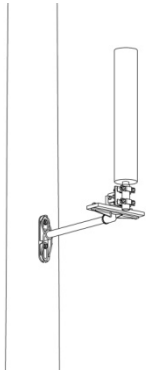
**Omni ("whip")-style antenna**  
48 to 72 inches high,  
1 to 3 inches in diameter



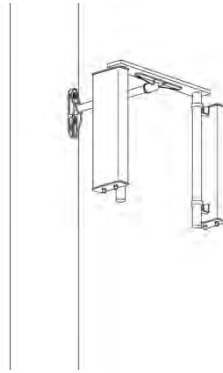
**Cylindrical-style antenna atop  
panel-style antenna(s):**  
cylinder 24 to 50 inches high,  
2 to 10 inches in diameter;  
each panel 24 to 58 inches  
high, 8 to 12 inches wide,  
4 to 10 inches deep,  
up to 3 panels per pole

Engineering and design determined on a site-by-site basis, some with extension bracket  
Scale approximate

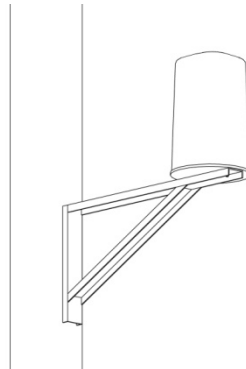
# Communications Space Antenna Designs



**Cylindrical-style antenna**  
24 to 36 inches high,  
2 to 14 inches in diameter



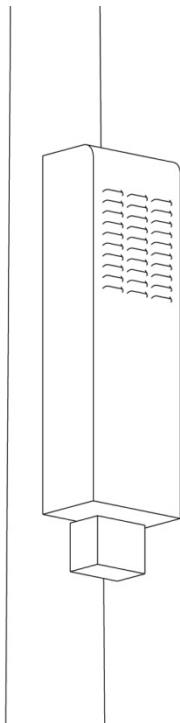
**Panel-style antenna(s)**  
each panel 24 to 36 inches high,  
8 to 12 inches wide,  
6 to 10 inches deep,  
Up to 3 panels per pole



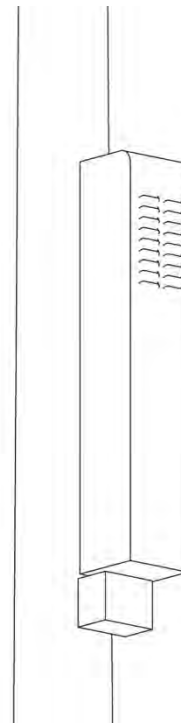
**Drum-style antenna**  
24 to 26 inches high,  
16 to 20 inches in diameter

Scale approximate

# Equipment Shroud Designs



**Equipment Shroud  
48 to 52 inches high,  
12 to 31 inches wide,  
10 to 15 inches deep**

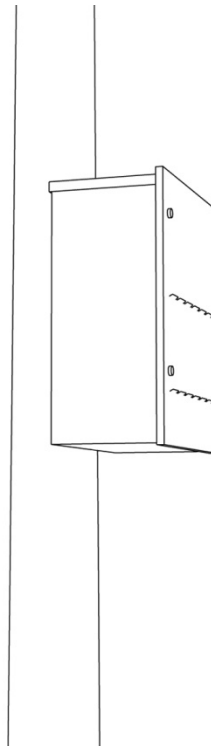


**Equipment Shroud  
48 to 70 inches high,  
8 to 15 inches wide,  
8 to 12 inches deep**

Scale approximate.

Mounting brackets, disconnect switch, electric meter (per utility standards), and associated attachments, such as channels, conduit, and grounding, to be constructed in accordance with national and local utility and safety codes.

# Battery Backup Unit

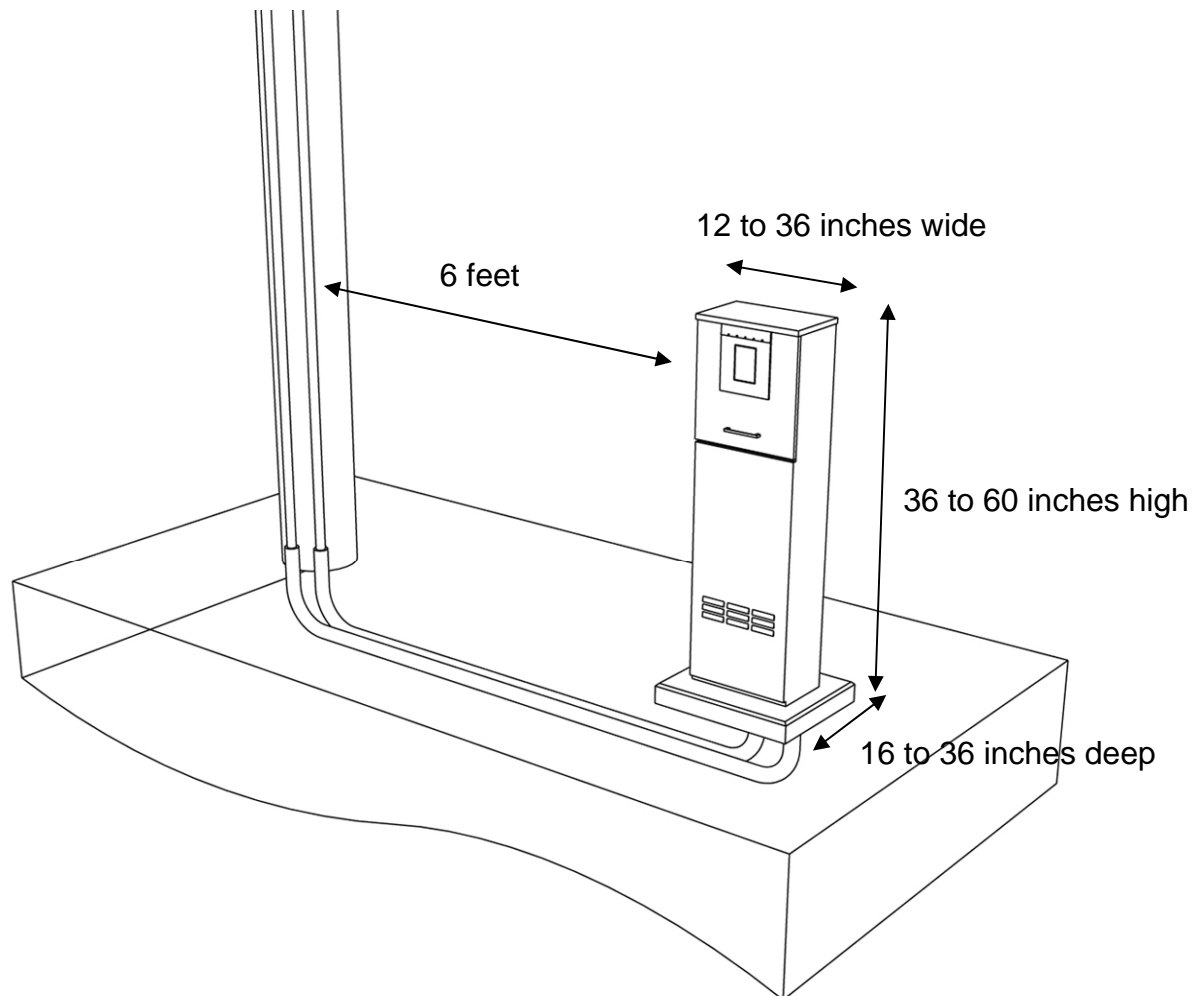


**Battery Backup Unit**  
**36 to 70 inches high,**  
**12 to 36 inches wide,**  
**8 to 24 inches deep**

Scale approximate.

Mounting brackets, disconnect switch, electric meter (per utility standards), and associated attachments, such as channels, conduit, and grounding, to be constructed in accordance with national and local utility and safety codes.

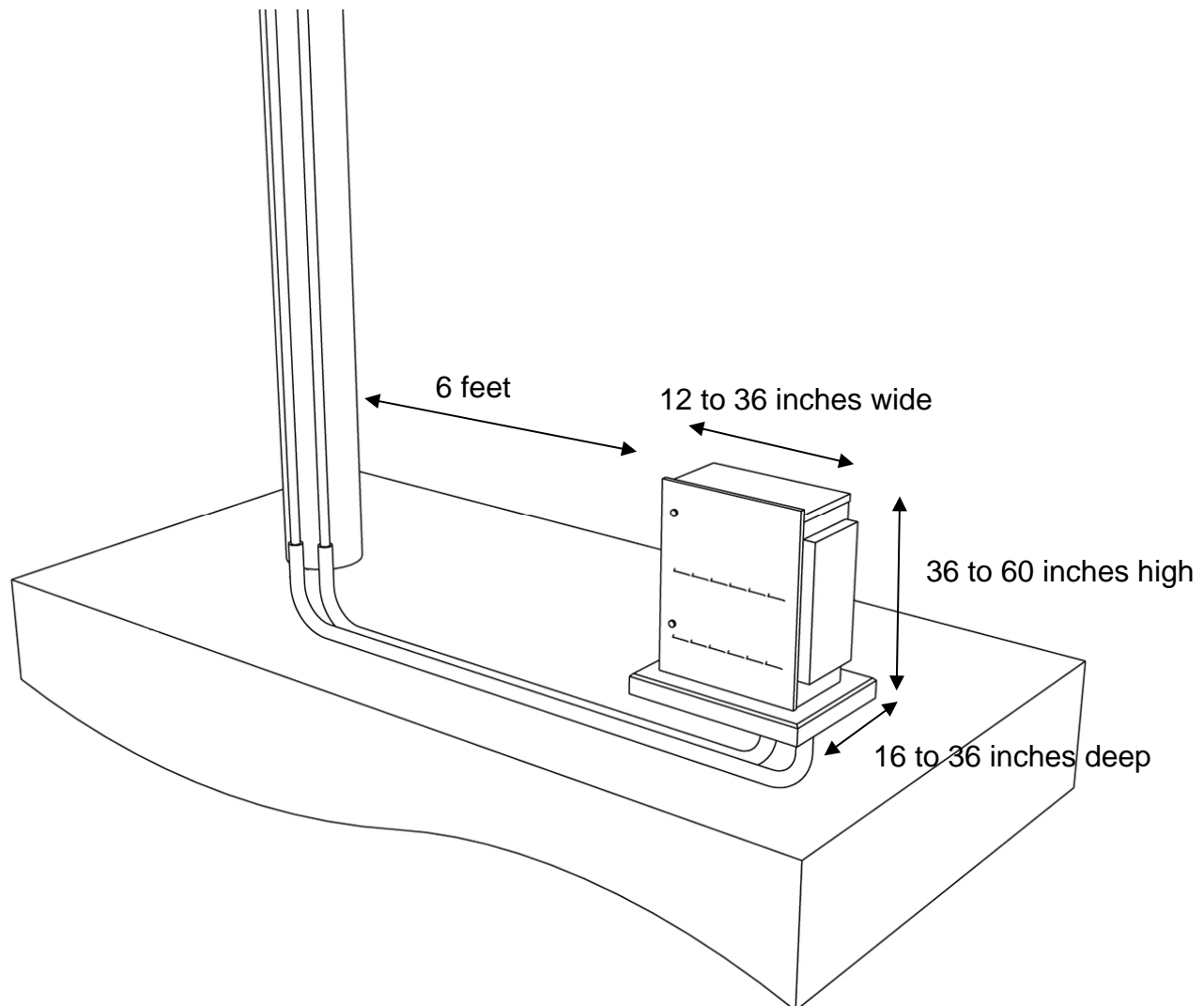
# Equipment on Pedestal



Scale approximate & dimensions are typical.

Mounting brackets, disconnect switch, electric meter (per utility standards), and associated attachments, such as channels, conduit, and grounding, to be constructed in accordance with national and local utility and safety codes.

# Battery Backup Unit on Pedestal



Scale approximate & dimensions are typical.

Mounting brackets, disconnect switch, electric meter (per utility standards), and associated attachments, such as channels, conduit, and grounding, to be constructed in accordance with national and local utility and safety codes.

**Exhibit B**

**Initial List of Equipment Locations**

***VILLAGE OF MATINECOCK, NY***

<b>Node ID</b>	<b>Pole Number</b>	<b>Road</b>	<b>Description</b>
RAN19	152	Chicken Valley Road	East side of Chicken Valley Road, third pole south of Planting Fields Road
RAN21	119S	Chicken Valley Road	West side of Chicken Valley Road, one (1) pole south of Laurel Woods Drive
RAN34	99	Chicken Valley Road	North side of Chicken Valley Road, two (2) poles west of Wolver Hollow Road
RAN35	84	Chicken Valley Road	North side of Chicken Valley Road, six (6) poles east of Locust Lane