

**AGENDA
REGULAR MEETING OF
THE PRESIDENT AND THE BOARD OF TRUSTEES**

**THE VILLAGE OF WAYNE
5N430 Railroad Street
Wayne, Illinois 60184**

**Tuesday, May 6, 2025
7:30pm**

**Link to Join Webinar
<https://us06web.zoom.us/j/85036473381>**

- I. Pledge of Allegiance**
- II. Call to Order - Roll Call**
- III. Swearing In Trustees – Clerk Engstrom**
- IV. Public Comment - (please limit your comments to three minutes)**
The Public Comment section is intended to give the public an opportunity to present a comment or opinion to the Board of Trustees. It is not intended to be a time for questions and answers or debate on political issues. Discussion between speakers and other members of the audience will not be permitted. For questions please email members of the Board directly and a Board member or staff will respond directly. Public Comment should be limited to this portion of the agenda and the public should not interrupt the Board during the remainder of the meeting. Should a member of the public become disruptive or interrupt another speaker they will be warned once, and if the disruption continues, removed from the meeting.
- V. Reports of Boards, Commissions, Staff, and Action Items**
 - A. Plan Commission**
 - B. Zoning Board of Appeals**
 - C. Engineering**
 - D. Park Commission**
- VI. Consent Agenda**
 - A. Minutes April 15, 2025 – Open & Closed Sessions**
 - B. Bedrock Earthscapes 2025 Barbara Dunham Dole Wildlife Sanctuary Maintenance - \$3,400.00**
 - C. Proclamation – Arbor Day**
 - D. Proclamation – Motorcycle Awareness Month**
- VII. Items Removed from Consent Agenda**
- VIII. Ordinances and Resolutions**
 - A. Res. 25-R-04; Affordable Housing Plan for Village of Wayne**
- IX. Reports of Officers and Action Items**
 - A. Clerk’s Report – Patti Engstrom**
 - B. Treasurer’s Report – Howard Levine**
 - C. President’s Report – Eileen Phipps**
 - D. Village Attorney’s Report – Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C.**

- X. Appointments – Village Commissions and Committees – President Phipps
- XI. Reports of Trustees and Action Items
 - A. Public Safety – Pete Connolly
 - 1. Salary Action Non-Supervisor Part-Time and Full-Time Sworn Police Officers
 - 2. Addition of Veterans Day (November 11th) as a recognized holiday in the Employee Personnel Manual for the Village of Wayne
 - 3. Closed Session – Item B. Appointment, Employment & Compensation of Village Employees
 - B. Public Works – Mike Dimitroff
 - 1. Salary Action Non-Supervisor Part-Time Employees
 - 2. Haying Contract between VOW & White Thorn Hay (WTH)
 - 3. Closed Session – Item B. Appointment, Employment & Compensation of Village Employees
 - C. Finance – Pete Connolly
 - D. Administration – Emily Miller
 - E. Development/Historic and Rural Preservation – Ed Hull
 - F. Building & Zoning – Gary Figurski
 - G. Parks – Emily Miller
 - H. Technology – Guy Bevente
 - 1. Draft Lumos License Agreement
- XII. Old Business
- XIII. Closed Session
 - A. Pending, Imminent or Probable Litigation – Open Meetings Act, 5 ILCS 120/2 (c) (11)
Open Meetings Act, 5 ILCS 120/2 (c) (1)B
 - B. Appointment, Employment and Compensation of Village Employees–Open Meetings Act, 5 ILCS 120/2 (c)(1)
 - C. Purchase or Lease of Real Property – Open Meetings Act, 5 ILCS 120/2 (c) (6)
 - D. The Setting of a Price for Sale or Lease of Village Property, 5 ILCS 120/2 (c) (6)
 - E. Security Procedures, Personnel, Equipment in Response to Threat of Potential Danger to Employees, Staff, Public or Public Property, 5 ILCS 120/2 (c) (8)
 - F. Discussion of Closed Minutes for Purposes of Approval or Semi-Annual Review, 5 ILCS 120/2 (c) (21)
 - G. The Selection of a Person to Fill Public Office, 5 ILCS 120/2 (c) (3)

Viewing the meeting via the Zoom webinar is offered as a convenience to the public but is not legally required. Access may be interrupted due to technical difficulties and, in the event the Village is unable to block public viewing when the Board enters a Closed Session, viewers will be removed from the Zoom meeting.
- XIV. New Business and Action Items
 - A. Confirm Offer of Employment, Police Records Clerk/Accountant Kim Haensel
 - B. Approval of Salary and Benefits as discussed in Closed Session
- XV. Adjournment

In lieu of making a comment in person, a member of the public may submit a written comment by email no later than noon on the day preceding the day of the meeting to clerk@villageofwayne.org and it will be read at the meeting. Written comments should be limited to 450 words or less and, when read, are subject to the three minute time limit for public comment.

Note: Any person who has a disability requiring a reasonable accommodation to participate in this meeting should contact ADA Compliance Officer Mon-Thurs 8:00am–12:00pm Village of Wayne, 5N430 Railroad Street, P.O. Box 532, Wayne, IL 60184, or call (630) 584-3090. Requests for a qualified interpreter require five (5) working days' advance notice.

February 18, 2025

SERVICE PROVIDER AGREEMENT

Village of Wayne
Attn: Emily Miller, Village of Wayne Trustee
5n430 Railroad Street
P.O. Box 532
Wayne, IL 60184

sent via email

Re: 2025 Barbara Dunham Dole Wildlife Sanctuary woods, wetland and prairie maintenance

Emily,

The following is a proposal for Bedrock Earthscapes to continue to maintain reclaimed areas in the Barbara Dunham Dole Wildlife Sanctuary to ensure their continued improvement. The areas to be maintained are shown on the attached map outlined in red. Bedrock Earthscapes, LLC looks forward to being entrusted with the ongoing maintenance of this unique and beautiful area in 2025.

DESCRIPTION OF SERVICES TO BE PROVIDED:

Eradication of non-desirable plants is almost impossible in native areas and ongoing stewardship of native areas is needed to control non-desirable plants.

Woodland and wetland maintenance:

Stewardship visits will be made during March, May, July and September. Cutting in March will be done to control woody re-growth and to cut down tall dead herbaceous growth from the prior year. Cutting will be done at approximately 8" to protect the crown of desirable plants. Selective spot herbicide treatments will be made in May, July and September. The purpose of these visits will be a) to control invasive woody and herbaceous plants through cutting and use of appropriate herbicides, and b) to ensure progress toward continually improving the native area health and beauty. All herbicide treatments will be made by a licensed pesticide applicator using non-restricted herbicides in accordance with prescribed material labeling.

Control of woody plants in the prairie:

Cutting and/or herbicide treatments will be made in the prairie area during our March, May, July and September visits to control the growth of non-desirable woody plants in the prairie.

Cost for 2025 stewardship: \$3,400.

Notes:

- No controlled burn is included.
- Service notes will be sent via email after each visit.

Please sign and return one copy of this proposal to authorize Bedrock Earthscapes, LLC to proceed.

Thank you.

Payment:

Billing for the specified maintenance work will be made in two equal amounts, once in May and once in September. Payment will be made in full within 30 days of receipt of billing.

RECEIVED BY
VILLAGE CLERKS OFFICE

APR 15 2025

VILLAGE OF WAYNE
WAYNE, IL

Enriching life through improving our environment.

Bedrock Earthscapes, LLC

SUSTAINABLE EARTHSCAPE SOLUTIONS

The Owner identified below, by its duly authorized representative, accepts the terms and conditions contained herein. This acknowledges authorization of services described above and the assent of the parties hereto to such terms and conditions.

On behalf of:

Accepted on behalf of:

Bedrock Earthscapes, LLC

Village of Wayne ("Owner")



By: William A. Bedrossian

By: _____

Title: Owner/Managing Member

Title: President, Village of Wayne



The areas outlined in red, and the 1 acre prairie are to be maintained as described.

Enriching life through improving our environment.

PROCLAMATION

ARBOR DAY 2025

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of More than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, The Village of Wayne has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways.

Now, therefore, I, Eileen Phipps, President, Village of Wayne, do hereby set forth a standing proclamation that in the Village of Wayne, Illinois all citizens are urged to protect our trees and woodlands, to support our city's urban forestry program, to plant trees to gladden the hearts and promote the well-being of future generations, and to celebrate Arbor Day annually on a day as close to the last Friday in April as is possible, April 25th, 2025.

Dated this 6th day of May 2025

Eileen Phipps
Village President of Wayne



THE VILLAGE OF WAYNE, ILLINOIS

PROCLAMATION BY THE MAYOR

WHEREAS, *safety is the highest priority for the highways and streets of our Village and State; and*

WHEREAS, *the great State of Illinois is proud to be a national leader in motorcycle safety, education and awareness; and*

WHEREAS, *motorcycles are a primary, common, and economical means of transportation that reduces fuel consumption and road wear, and contributes in a significant way to the relief of traffic and parking congestion; and*

WHEREAS, *it is especially meaningful that the citizens of our Village and state be aware of motorcycles on the roadways and recognize the importance of motorcycle safety; and*

WHEREAS, *the members of ABATE of Illinois, Inc. (A Brotherhood Aimed Toward Education), continually promote motorcycle safety, education, and awareness in high school drivers' education programs and to the general public in our Village and State, presenting motorcycle awareness programs to over 120,000 participants in Illinois over the past nine years; and*

WHEREAS, *all motorcyclists should join ABATE of Illinois, Inc. in actively promoting the safe operation of motorcycles as well as promoting motorcycle safety, education, awareness and respect of the citizens of our Village and State; and*

WHEREAS, *the motorcyclists of Illinois have contributed extensive volunteerism and money to national and community charitable organizations; and*

WHEREAS, *during the month of May, all roadway users should unite in the safe sharing of roadways within the Village of Wayne and throughout the great State of Illinois;*

THEREFORE, *I Eileen Phipps_Mayor of the Village of Wayne, in the great state of Illinois, in recognition of 38 years of ABATE of Illinois, Inc., and over 352,318 registered motorcyclists statewide, and in recognition of the continued role Illinois serves as a leader in motorcycle safety, education and awareness,*

DO HEREBY PROCLAIM THE MONTH OF MAY, THIS YEAR 2025 AS

MOTORCYCLE AWARENESS MONTH

In the Village of _Wayne, and urge all motorists to join in an effort to improve safety and awareness on our roadways.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the Village of Wayne, to be affixed this ____ day of _____, in the year Two Thousand Twenty-Five. (SEAL)

**VILLAGE OF WAYNE
DUPAGE AND KANE COUNTIES, ILLINOIS**

RESOLUTION NO. 25-R-04

**A RESOLUTION APPROVING AN AFFORDABLE
HOUSING PLAN FOR THE VILLAGE OF WAYNE**

**ADOPTED BY THE PRESIDENT AND
BOARD OF TRUSTEES OF THE
VILLAGE OF WAYNE
DUPAGE AND KANE COUNTIES, ILLINOIS**

THIS ____ DAY OF MAY, 2025

**PUBLISHED by authority of the
President and Board of Trustees
of the Village of Wayne, DuPage
and Kane Counties, Illinois
this ____ day of _____, 2025**

VILLAGE OF WAYNE
DUPAGE AND KANE COUNTIES, ILLINOIS

RESOLUTION 25-R-04

**A RESOLUTION APPROVING AN AFFORDABLE
HOUSING PLAN FOR THE VILLAGE OF WAYNE**

WHEREAS, the President and Board of Trustees of the Village of Wayne find that the State of Illinois has previously enacted the Affordable Housing Planning and Appeal Act which provides that municipalities may be designated as either exempt or non-exempt based on the amount of housing within the municipality meeting the criteria of “affordable,” and requires non-exempt municipalities to develop and submit to the State an “Affordable Housing Plan;” and

WHEREAS, the Village of Wayne has been determined to be non-exempt; and

WHEREAS, in 2019 the Village of Wayne previously adopted an Affordable Housing Plan; and

WHEREAS, the Village President and Board of Trustees find that it is the policy of the Village to provide affordable housing options, and desire to update the previous Affordable Housing Plan in order to continue to provide affordable housing options as opportunities occur consistent with the Village’s policies favoring single family homes and land use and development consistent with the Village’s limited infrastructure;

NOW, THEREFORE, BE IT RESOLVED, by the President and Board of Trustees of the Village of Wayne that the Village of Wayne Affordable Housing Plan, a copy of which is attached hereto as Exhibit “A”, is hereby approved.

BE IT FURTHER RESOLVED, that the Village Clerk is authorized and directed to transmit a certified copy of this Affordable Housing Plan to the Illinois Housing Development Authority.

PASSED AND APPROVED THIS _____ DAY OF MAY, 2025.

AYES: _____

NAYS: _____

ABSENT: _____

Eileen Phipps, President

ATTEST:

Patricia Engstrom, Village Clerk

Village of Wayne

Affordable Housing Plan

I. Introduction and Statutory Requirements

In 2003, the Illinois General Assembly passed the Affordable Housing Planning and Appeal Act to address the lack of moderately-priced housing in many Illinois communities. According to the statute, “affordable housing” means “housing that has a value or cost or rental amount that is within the means of a household that may occupy moderate-income or low-income housing. In the case of owner-occupied dwelling units, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of dwelling units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit.”

As of the Illinois Housing Development Authority’s most recent report in 2023, the Village of Wayne has been identified as a “non-exempt local government” due to its current number of “affordable housing units” being below 10% of its total “year-round units.” As a result, the Village is required to submit an “Affordable Housing Plan” within 18 months of notice of its non-exempt status. This plan must provide specific information, namely:

- Statement of the total number of affordable housing units that are necessary to exempt the local government from the operation of the Act, as defined in Section 15 and Section 20, and based on the numbers included in AHPAA Local Government Exemption Report published by IHDA.
- Identification of lands within the jurisdiction that are most appropriate for the construction of affordable housing and of existing structures most appropriate for conversion to, or rehabilitation for, affordable housing, including a consideration of lands and structures of developers who have expressed a commitment to provide affordable housing and lands a structures that are publicly or semi-publicly owned.
- Incentives that the local government may provide for the purpose of attracting affordable housing to their jurisdiction.
- Selection of one of the following three goals for increasing local affordable housing stock:
 - Requiring a minimum of 15% of all new development or development within the local government that would be defined as affordable housing in this Act;
 - Requiring a minimum of a 3% percentage point increase in the overall percentage of affordable housing within its jurisdiction, as defined in Section 20 of this Act;
 - or

- Requiring a minimum of 10% of affordable housing within its jurisdiction.

The Village of Wayne intends to comply with the IHDA's directive that it prepare and adopt an affordable housing plan. The Village recognizes the importance of providing affordable housing throughout the State of Illinois and believes that affordable housing must be provided in a way that does not compromise the public health or safety or destroy the environment and character that defines a particular community.

II. Total Number of Necessary Affordable Housing Units

According to the most recent report titled "Affordable Housing Planning and Appeal Act: 2023 Report of Non-Exempt Local Governments" published by the Illinois Housing Development Authority in 2018, the Village of Wayne must add an additional 42 affordable housing units to its existing 50 affordable housing units to achieve compliance under the Act.

III. Appropriate Lands and/or Existing Structures for Affordable Housing

The Village is largely constrained by neighboring municipalities. There are no parcels of significant size available for development within the Village of Wayne and opportunities to annex undeveloped land are extremely limited. The Village has designated the following as potential areas for affordable housing, with the recognition that when a specific proposal is presented, assuming other servicing requirements – including sanitary sewer service – the Village will be required to modify the zoning permitted:

1. Southernmost property on the west side of Powis Road has been identified as a potential site for new construction and/or modification to accommodate affordable housing, although development in this area would require the cooperation of neighboring West Chicago to supply sewer and water service to such site.
2. Vacant parcels indicated in relevant map(s) depicting future land use as part of subsequent iterations of the Village's Comprehensive Plan.
3. Existing older single-family homes as renovation and turnover may occur.
4. Future zoning districts identified for the development of diverse housing types as recommended within subsequent iterations of the Village's Comprehensive Plan.

IV. Incentives to Promote Affordable Housing Growth

Although the Village of Wayne is unable to provide direct financial subsidies to entities wishing to construct and/or renovate existing structures to accommodate affordable housing, its plan is to simplify and expedite the building permit process, approvals and hearings as they relate to the development of affordable housing. The Village plans to carry out this strategy while ensuring the safety and welfare of its citizens and while also staying mindful of the unique rural and architectural characteristics existing throughout the community.

V. Goals for Increasing Local Affordable Housing Stock

In order to achieve compliance under the Act, the Village of Wayne will work to ensure that a minimum of 15% of all new development or development within the Village qualifies as affordable housing as defined in the Act.

VI. Senior Housing

It is the belief of the Village that older members of the community who can no longer live on their own due to physical or mental disabilities/limitations or who require professional assistance should have the opportunity to continue to live within the community. To this end, the Village encourages the development of affordable senior housing which will allow older members of the community to remain members and continue to live in close proximity to family and friends. In particular, the Village recognizes that the location referenced in Paragraph 1 of Section 3 above may be a suitable site for such development and will attempt to identify additional sites with similar potential in the future.

VII. Closing

The Village strives to provide additional affordable housing units within the community, but ultimately cannot control market forces that affect the affordability of land and housing within Wayne, nor the income levels of households that serve as the benchmark for determining affordability. Due to these factors and despite the Village's goals, it is not and cannot practically be a goal of this plan to meet the target levels of affordable housing units stated above in any specific time frame. Rather, it is the objective of this plan that, by pursuing the goals set forth above, the Village will have created conditions amenable to ultimately achieving the stated affordable housing targets in Wayne in a manner that will not impact the health and safety capabilities of the Village and will protect and preserve the character and environment of the Wayne community.

The Village Board of Trustees adopted his plan, via the attached Resolution 25-R-04.

HAYING CONTRACT

THIS CONTRACT entered into on this _____ day of April 2025, White Thorn Hay, LLC, an Illinois limited liability company (hereinafter referred to as "WTH") and the Village of Wayne, a municipal corporation, with offices at 5N430 Railroad Street, Wayne, Illinois 60184 (hereinafter referred to as "the Village").

1. THE WORK

A. WTH agrees to perform mowing and hay baling on the property known as Honey Hill Meadow, situated on property located at the southwest corner of Army Trail Road and Honey Hill Drive in the Honey Hill Subdivision of the Village of Wayne, Illinois, which said property is more specifically described on the Plat of Subdivision of the Honey Hill Subdivision (hereinafter referred to as the "Subject Property").

B. The work shall be performed during the "Haying Season," meaning the spring, summer, and fall of each year of this Contract. This Contract shall automatically renew for each mowing season unless terminated by either party which termination may be done for convenience upon written notice to the other party prior to December 31 of each year.

C. The Village authorizes WTH to apply a fertilizer to the Subject Property at WTH's own expense and at no additional cost to the Village. Said type and amount of fertilizer must be approved by the Village Board prior to its application to the Subject Property.

2. CONTRACT PRICE AND PAYMENT SCHEDULE

WTH has agreed to pay the Village Five Hundred Dollars (\$500.00) for each Haying Season, which sum shall be paid before the first mowing.

3. INSURANCE

WTH shall, prior to the commencement of the work, and prior to entering the job site for any purpose, deliver to the Village a proof of Liability Insurance with limits of no less than \$500,000.00 per person and \$1,000,000.00 per occurrence naming WTH as insured and the Village as additional primary and non-contributory insured. Continued proof of Liability Insurance shall

be provided to the Village at the commencement of each Haying Season prior to WTH entering the Subject Property in each subsequent Haying Season.

4. CHANGES TO THE CONTRACT

No work shall be added or deleted from this Contract unless the parties agree in writing.

5. PROSECUTION AND PROTECTION OF THE WORK AND SAFETY OF THE SITE.

WTH shall execute all work in a good, orderly and workmanlike fashion.

6. EQUIPMENT

WTH is responsible for his own tools and equipment and shall hold the Village harmless from and against any damage occasioned to WTH's equipment for any cause.

7. INDEMNITY

WTH hereby indemnifies and holds the Village harmless from and against any and all liability associated with acts or omissions of WTH, or its officers, agents, employees, subcontractor or assigns. This provision is not intended to waiver any statutory or common law privileges or immunities as they relate to the Village. There is no third-party beneficiary of this Agreement.

8. AMENDMENTS

This agreement constitutes the full and complete agreement of the Parties. Any modifications to the agreement shall be in writing, executed by both the Village and WTH.

9. ASSIGNMENTS

No portion of this Contract may be assigned by either party without the written consent of the other.

10. INVALIDITY

If any portion of this Contract that is held invalid shall not invalidate any other portion of the Contract.

11. CONSTRUCTION

This Contract shall be construed by the laws of the State of Illinois. The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

12. **BINDING EFFECT**

In acknowledgment of their intent to be bound to the terms of this agreement, the Village and WTH have set forth their hands and seals this _____ day of April, 2025.

By: _____
Eileen Phipps, Village President
Village of Wayne, Illinois

White Thorn Hay, LLC
By: 
John Carlisle, Manager

**FARM UMBRELLA LIABILITY
POLICY DECLARATIONS**

COUNTRY Mutual Insurance Company
P.O. Box 2100, Bloomington, Illinois 61702-2100

BILLING NUMBER	POLICY NUMBER	INSURANCE OFFICE / NO
0004691764	AAU0310434	12039 SCHAR/ 28776

NAMED INSURED:

CARLISLE JOHN W & BARBARA A
PO BOX 1201
WAYNE IL 60184

POLICY EFFECTIVE ON: May 18, 2024 12:01 A.M. Standard
Time at your address

DECLARATIONS EFFECTIVE: May 18, 2024

THIS DECLARATIONS HAS BEEN ISSUED DUE TO:

Policy Renewal

To report a claim any time day or night, call 1-866-COUNTRY(1-866-268-6879).

LIMITS OF LIABILITY

Liability any one occurrence	\$ 1,000,000
Self Insured Amount	\$ 1,000

SCHEDULE OF UNDERLYING INSURANCE

TYPE OF POLICY	NAME OF CARRIER	POLICY NUMBER	LIMITS OF LIABILITY
Auto Liability	COUNTRY Preferred Ins Co	P12A 8622103	250/500/100
Farm Liability (Farmowners)	COUNTRY Mutual Ins Co	A12L 0117669	500,000 Single Limit

THIS IS NOT A PREMIUM NOTICE

BILLING MODE: Annual unless otherwise stated below	TOTAL PREMIUM AND ASSESSMENTS	\$ 264.00
ENDORSEMENTS ATTACHED 90176, 24715IL, 24684, 20269	STANDARD PAYMENT PLAN FEE	\$ 0.00



AUTHORIZED REPRESENTATIVE

4/12/2024

DATE COUNTERSIGNED

**MASTER LICENSE AGREEMENT BETWEEN LUMOS FIBER OF ILLINOIS, LLC
AND THE VILLAGE OF WAYNE**

This LICENSE AGREEMENT ("Agreement") is made ~~as of the this~~ _____ day of _____, 2025, between the Village of Wayne, ~~an Illinois municipality~~, with its principal offices located at 5N430 Railroad St., Wayne, IL 60184, hereinafter designated "Village", and Lumos Fiber of Illinois, LLC, whose principal place of business 4100 Mendenhall Oaks Parkway, Suite 300, High Point, North Carolina, hereinafter designated "Licensee." Village and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

WHEREAS, the Village is the exclusive owner of certain public rights-of-way ~~and is the grantee of certain utility easements within the Village~~, and has approved official standards for the construction of facilities on the public right-of-way ~~or on public utility easements~~; and

WHEREAS, the Village has the right and power to regulate and permit the installation, attachment, operation, and maintenance of telecommunications facilities upon public property, ~~and in the public rights-of-way~~, ~~or upon public utility easements granted to the Village and~~ within its municipal boundaries; and

WHEREAS, the Licensee desires to construct, install, attach, operate, repair, maintain, and remove fiber telecommunications facilities in and/or upon the Village's public rights-of-way ~~and public utility easements (the "ROW" or "ROWS")~~ within the Village's boundaries, subject to the provisions of this Agreement; and

WHEREAS, in consideration of the payment of license fees, the Village desires to allow ~~Licensee~~ to utilize the ROWs for such purposes, subject to the provisions of this Agreement; and

WHEREAS, the Village Board of Trustees ("Village Board") has determined that the establishment of ~~this a Master License Agreement~~ for telecommunications use of public ways will properly facilitate and manage the deployment of telecommunications facilities without requiring ~~Licensee a telecommunications company~~ to come before the Village Board each time it seeks approval of a site specific permit for a facility within ~~the~~ ROW; and

~~**WHEREAS**, regulation of the deployment of telecommunication facilities within Village ROWs can be accomplished through the use of site specific permitting, managed and controlled by the Village, but only after a telecommunications company agrees to the terms of this Agreement; and~~

WHEREAS, Section 253 of the Federal Communications Act of 1934, as amended, including 47 U.S.C. Section 253, and Illinois 220 ILCS 5/21-1001, provides that the Village has the authority, subject to certain limitations, to control access to and use of the ROWs within the Village; and

WHEREAS, the Village has the authority to enter into this Agreement pursuant to the powers granted it by Article VII, Section 10(a) of the Illinois Constitution of 1970, and finds that entering into this Agreement is in the best interests of the Village, its residents, and the public; and

WHEREAS, the Licensee is authorized and empowered to enter into this Agreement and to perform the covenants and promises herein made and undertaken.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

- 1) RECITALS: The foregoing recitals are incorporated herein as definitions, substantive provisions and as representing the intent of the Parties.
- 2) GRANT OF LICENSE: For and in consideration of the mutual covenants herein, and subject to the terms and conditions set forth herein and compliance with all federal, state and local laws and regulations, the Village grants a non-exclusive revocable license ("License") to the Licensee for the use of the ROWs to construct, install, operate, use, own, repair, maintain and remove underground and aerial fiber telecommunications facilities ("Facilities"). For purposes of this Agreement the term Licensee includes means the defined entity and any subcontractor or other entity hired by the defined Licensee to perform any services related to the Facilities.

The License granted by this Agreement shall not convey any right, title, or interest (including leasehold interest) in the ROWs, but shall be deemed to be a license only to use and occupy the ROWs for the limited purposes stated herein. In the event of default by the Licensee, the Village shall not be obligated to bring a forcible entry and detainer action to terminate the Licensee's rights hereunder. The rights granted to the Licensee by the Village are and shall be at all times subordinate to the Village's right to ingress and egress and use the public ROWs. All rights and obligations of the Licensee under this Agreement shall be exercised by the Licensee at its sole cost and expense.

This Agreement and the rights granted to use and occupy the ROWs shall not be exclusive and do not, explicitly or implicitly, preclude the issuance of other licenses to operate telecommunications facilities within the Village's municipal boundaries.

- 3) TERM AND FEES: The term of this Agreement shall be for a period of five (5) years, beginning on the date approved by the Village Board, unless otherwise sooner terminated as provided for herein. During the first five years of the initial term, the Licensee shall pay a license fee in the amount of Seven Hundred Fifty Dollars (\$750.00) for the first year, Five Hundred Dollars (\$500.00) for each year thereafter and an initial fee of Five Two Thousand Seven Hundred Fifty Dollars (\$5,0002,750.00) to the Village prior to the issuance of any permits ("License Fee"). This Agreement shall automatically renew for an additional five (5) year term provided that the Licensee is in full compliance with this Agreement.

Commented [A1]: Same comment as above

Commented [A2]: Do you want the License to renew automatically or upon notice?

In the event Licensee does not start the Project within one (1) year, or complete the Project within two (2) years of the date of this Agreement then Licensee shall

reimburse the Village for all legal and engineering fees incurred by the Village and not covered by the initial or annual License Fee.

Following the first renewal term, this Agreement may be renewed by mutual agreement of the Parties for successive five (5) year terms provided that the Licensee is in full compliance with the terms and conditions of this Agreement at the time of renewal. The Licensee shall make written request for renewal of this Agreement at least sixty (60) days prior to the expiration of the current term.

Unless otherwise provided by law, each renewal shall be subject to a License Fee that will be determined at the time of each renewal but shall not exceed the increase in the Consumer Price Index from the prior Term. In the event the Licensee chooses not to renew this Agreement or the Parties cannot agree upon an amount for the License Fee for a renewal terms, the Agreement shall terminate and, if the Village so chooses and notifies the Licensee in writing of the decision, the Licensee shall remove its Facilities from all Village ROWs and restore all ROWs as required herein. The Licensee shall also be required to pay any applicable permit fees for each permit issued.

Commented [A3]: Same comment as above

3)4) TITLE AND CONDITION OF ROWs: It is understood and agreed that the Village makes no representations, warranties or assurances with respect to the following: the condition of the title or boundaries of the ROWs; the condition of the underground duct or conduit; other utilities or facilities in the ROWs; any other improvements or soils located on the ROWs; or the suitability of the ROWs for the Licensee's intended use. The Licensee assumes all risks associated with the placement, operation and maintenance of the Facilities within the ROWs and suitability of the ROWs for its Facilities. The Licensee accepts the ROWs in an "As Is, Where Is" condition, including any environmental conditions, and accordingly, the Village shall not be held liable for any damages or liabilities resulting from any actions that arise because of any claims concerning the title, boundaries or condition of the ROWs.

5) LOCATION: The location of the Facilities shall be as reasonably approved by the issuance of a permit. Such approval by the Village shall not be unreasonably withheld, conditioned, or delayed. The Village shall provide any maps, GIS files, KMZ maps, or similar files in the Village's possession to Licensee before Licensee submits its permits for use of the ROWs, if available. The Licensee shall furnish to the Village all "as built" plans upon completion of construction under a permit and for all reconstruction, repair, relocation and other work performed thereon within ninety (90) days after completion of such work. Notwithstanding the foregoing, the Licensee shall not be required to provide "as built" plans for routine maintenance, reconstruction, or repair work performed. Unless otherwise stated on a permit issued by the Village, the Licensee shall not locate the Facilities so as to unreasonably interfere with the use of the ROWs by the Village, by any utility, by the general public or by other persons authorized to use or be present in or upon the public ROWs. The Licensee shall relocate, at its sole cost and expense, any part of its Facilities that is not located in compliance with the permit requirements within thirty (30) days of the Village's written notice to Licensee of such noncompliance.

Licensee shall install the Facilities at all the locations, including, but not limited to, the subdivisions of Woods of Wayne, Wayne Meadows, Lake Eleanor, and Bradford Park,

as shown on Exhibit B, attached hereto and by reference incorporated herein, and offer services to any residence located within the locations shown on Exhibit B.

- 4)6) **USE OF ROWS:** In the Licensee's use of the ROWs and any work to be performed thereon, the Licensee shall comply with all applicable laws, ordinances, regulations and requirements of federal, state, county, and local regulatory authorities, including the applicable provisions of the Village of Wayne Municipal Code Title 7, Chapter 8 as may be amended from time to time ("Village ROW Standards"). In the event of a conflict between this Agreement and the Village ROW Standards, the structured terms and conditions shall control.

The Licensee shall use and occupy the ROWs to construct, install, operate, use, repair, maintain, and remove the Facilities, which shall be limited to underground conduit and fiber telecommunications cable where existing similar utilities are underground, and aerial fiber optic telecommunications cable where existing similar utilities are located aerially, and related equipment and facilities only, it being specifically understood that the ROWs shall not be used for the burning of refuse, the accumulation and/or storage of debris or other material, or for any unsanitary or unhealthful purposes. All parts of the Licensee's Facilities shall be underground where feasible, where required by the Village's Municipal Code, and as determined by existing conditions. Any unauthorized or impermissible use of the ROWs shall be deemed to be a material breach of this Agreement.

The Licensee warrants that the installation of the Facilities will be performed without any trenching or open trenching, but rather by directional or missile boring. If boring is not possible for installation of the required Facilities, the Licensee agrees to work with the Village to determine the method of installation to be used, and to obtain the permission of the Village. The Licensee should take all reasonable steps to avoid disturbing pavement for the installation, operation, maintenance, or removal of its Facilities. To the extent that any such disturbance cannot be avoided, the Licensee shall restore affected areas to their original condition following the installation of the Facilities, as provided in Paragraph 10 of this Agreement. All movement and storage of equipment and materials shall be confined to the area reasonably designated by the Village. All surplus excavated material shall be removed from the ROWs and disposed of in accordance with any applicable laws or regulations. All tree stumps, and other debris resulting from construction operations shall be removed from the ROWs.

If the utility to be installed is within the right-of-way of another agency, documentation that a permit has been applied for from the other agency such as IDOT or DuPage County or Kane County, or other state or county permits may be required.

- 5)7) **INSTALLATION, OPERATION AND MAINTENANCE:** As a condition precedent to its right to access, use or attach any of its Facilities, the Licensee shall, prior to occupying any area, submit a site specific permit application for each location, including all siting, design, construction methodology, manufacturer's specifications, and structural engineering reports as necessary, and receive from the Village a permit for each serving area. The Village may request additional information if necessary to process the application. The Licensee shall also pay any applicable permit fees as required by law and the Village ROW Standards.

Unless otherwise provided by law, the Village reserves the right to refuse to approve or authorize any permit application when it determines that space in a ROW is inadequate to accommodate the Licensee's Facilities. All terms and conditions contained in this Agreement shall be incorporated into each individual permit obtained for each location. The installation, operation, and maintenance of the Facilities shall comply with all applicable ordinances, statutes, laws, or regulations.

The Licensee, in the performance and exercise of any of its authorizations and obligations under this Agreement, shall not obstruct or interfere in any manner with the Village ROWs, existing utility easements, private rights of way, sanitary sewers, sewer laterals, water mains, storm drains, gas mains, poles, aerial and other existing telecommunications facilities without the express written approval of the Village or the other owners, including franchisees, of the affected property. If the Licensee proposes to install its Facilities on a non-Village owned utility pole in the ROW, the Licensee shall submit its redacted written agreement with the franchisee or licensee which owns the existing utility pole as part of its permit application for the serving area.

Maintenance of the Facilities within the ROWs shall be the responsibility of the Licensee. The Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state, and local laws, regulations, and policies. The Licensee shall use due care to ensure that no damage, beyond reasonable wear and tear, is caused to the ROWs. The Licensee shall report any damage it causes to any affected party in writing within twenty-four (24) hours of being made aware of the damage. The Licensee shall reimburse the other party for reasonable damages caused by its employees, contractors, subcontractors, agents, representatives, or its Facilities.

Notwithstanding any provisions to the contrary herein, in the event of an unexpected repair or emergency ("Emergency Maintenance"), the Licensee may access the ROWs and commence such Emergency Maintenance work as required under the circumstances, provided the Licensee shall comply with the requirements for Emergency Maintenance set forth more particularly in Sec. 7-8-20 of the Village Code.

6)8) **MARKING:** Prior to and during any installation or relocation of any underground cables or utility lines, the Licensee shall contact J.U.L.I.E. to ascertain the presence and location of existing aboveground and underground facilities within the ROWs to be occupied by the Licensee's Facilities and install route markers in accordance with the Illinois Underground Facilities Damage Prevention Act.

The Village shall have no obligation to mark the location of the Licensee's Facilities. The Licensee agrees that it will become a member of J.U.L.I.E. as a requirement of this Agreement and that such a system is designed to alert the Licensee to planned work in the rights-of-way, so that the Licensee can mark the location of its facilities to avoid damage. The Village shall have no obligation to alert the Licensee to proposed work by itself or others, other than as a participating member of the J.U.L.I.E. system.

7)9) **PUBLIC SAFETY:** The Licensee or other persons acting on its behalf, at its own expense, shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent

injury or damage to any person, vehicle, or property by reason of any work in or affecting the ROWs or other property.

If the Village, in its reasonable discretion, determines that a particular use of the ROWs by the Licensee is, or will be, hazardous to the public or the property, the Licensee, upon written notice from the Village, shall install commercially reasonable safety devices or make commercially reasonable modifications at the Licensee's sole expense to render the ROWs safe for, and compatible with, public use. In the event the Licensee fails to install such safety devices or make required modifications within twenty-four (24) hours, or, if such modifications cannot be completed expeditiously to render the ROWs safe for the public, the Village may install such safety devices. In the event the Village installs such safety devices after the notice period has lapsed without action by Licensee, the Licensee agrees to pay the actual costs of such improvements within forty-five (45) days of written demand, or the Village may terminate this License Agreement, with all rights of the Licensee hereunder being forfeited, and the Licensee waives all rights and claims of any kind against the Village arising out of this License Agreement and its termination..

8)10) RESTORATION OF ROWS: Within ten (10) days after initial construction operations have been completed or after repair, relocation, or removal of the Facilities, the Licensee shall grade and restore all areas disturbed by construction operations to a condition substantially similar to that which existed prior to the work. This time period may be extended for good cause shown. If weather or other conditions do not permit the complete restoration required by this Section, the Licensee shall temporarily restore any disturbed property. Such temporary restoration shall be at the Licensee's sole expense and the Licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions permit such permanent restoration.

For a period of twelve (12) months following any work in the ROWs by the Licensee or any person acting on the Licensee's behalf the Licensee shall, at its sole expense, be responsible for all costs of restoring any disturbances or damage to the ROWs or any other Village property and for all repairs or damage to Village property caused by the Licensee, its officers, agents, employees, contractors, subcontractors, successors, and assigns, except to the extent any of the foregoing are caused by the negligence or intentional misconduct of the Village. All such restoration shall be performed in accordance with the Village ROW Policy and to the reasonable satisfaction of the Village..

Disturbed grass areas shall be restored to a substantially similar condition as the areas were in prior to Licensee's work. All open excavations necessary for the installation, repair, relocation, maintenance, or removal of the Facilities shall be properly backfilled, and any asphalt pavement or PCC concrete pavement or sidewalk shall be replaced with like-kind and quality of materials. The backfill settlement repair period shall be for five (5) years from the date of placing said backfill, during which time the affected areas shall be maintained by the Licensee at its sole expense in a condition satisfactory to the Village. Upon receipt of notice from the Village indicating that maintenance is required Licensee will perform the work within a commercially reasonable timeframe. To the extent that maintenance is required within a Village ROW that multiple licensees are under maintenance obligations for, Licensee shall

only be obligated to pay its proportionate share of the maintenance costs. Village shall place in its other license agreements with other licensees the same or substantially similar language to ensure that Licensee is not paying more than its proportional share of the maintenance. Under hard surface areas, such as roadways, sidewalks and drives, trench backfill shall be compacted and certified by the Village to comply with the Village construction standards. All restoration work shall be completed in accordance with the Village ROW Policy or other Village zoning or construction standards, whichever is more stringent and/or comprehensive.

In the event the Licensee fails, in a timely manner, to restore any disturbances or make any and all repairs to the ROWs or other Village property as set forth above, the Village may make or cause to be made such restoration or repairs and first demand payment from the Licensee, who agrees to pay the reasonable costs of such restoration or repairs within forty-five (45) days of written demand and receipt by the Licensee of all invoices and documentation supporting the actual costs incurred by the Village. In the event Licensee fails to make such payment, the Village may demand payment from the security posted by the Licensee.

~~9)~~**11) ENVIRONMENTAL:** The Licensee shall not trim or cut any trees or shrubs, alter or impede water flowage, apply chemicals or disturb the topography of the ROWs in any manner without prior written approval of the Village. The Licensee will take all reasonable steps to assure that the Licensee will not release any regulated material in violation of any federal or state environmental law on the ROWs. The Licensee, at its sole cost and expense, shall remediate, remove, clean up or abate in accordance with federal or state law, or directives of the appropriate oversight agency, a release of a regulated material in violation of a federal or state law occurring on the ROWs, to the extent such a release was caused by the Licensee. In the event of a release of a regulated material in violation of a state or federal law on the ROWs by the Licensee, or any claim or cause of action brought against the Village regarding such release, the indemnification provided for in Section 16 shall apply.

~~10)~~**12) DAMAGE TO THE LICENSEE'S FACILITIES:** The Village shall not be liable for and the Licensee expressly waives all claims for any damage to or loss of the Licensee's Facilities within the ROWs as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the ROWs by or on behalf of the Village except as may be due to the negligence or willful misconduct of the Village, its employees, contractors, subcontractors, agents, or invitees.

~~11)~~**13) LICENSEE FORM OF BUSINESS DISCLOSURE:** The Licensee agrees to complete and maintain on file with the Village a current Disclosure Affidavit, attached as Exhibit A to this Agreement.

~~12)~~**14) NO TRANSFER OR ASSIGNMENT:** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns. During the term of this Agreement, the Licensee acknowledges and agrees that it does not have the right or authority to transfer or assign this Agreement or any interest herein without the prior written consent of the Village; provided however, that the Licensee shall have the right, without the Village's prior written consent, but with prior written notice to the Village and submission of a revised Exhibit A, to assign or otherwise transfer this

Agreement to any successor entity or affiliate or subsidiary of the Licensee, or to any entity into which the Licensee may be merged or consolidated or which purchases all or substantially all of the assets of the Licensee. Any such written consent required under this Section may not be unreasonably withheld, conditioned, or delayed. Any transferee or assignee must, at a minimum, show satisfactory evidence that it meets the insurance requirements and other terms, conditions, and provisions contained herein. In the event the License herein granted is terminated or the Licensee transfers title to the Facilities or vacates or ceases to use the Facilities, the Licensee shall, nevertheless, remain liable to the Village under the provisions hereof, until said Facilities herein authorized are removed or abandoned pursuant to this Agreement, and the public ROWs are restored as herein required. Acceptance of payment from an entity or person other than the Licensee shall not constitute a waiver of this provision. In all instances a successor Licensee shall notify the Village Engineer of its legal identity, address, e-mail address, phone numbers, and the identity of its responsible representative to the Village.

13)15) INSURANCE.

- a) Required coverage and limits. The Licensee shall secure and maintain the liability insurance policies specified by the Village insuring it as named additional insured and including the Village and its elected and appointed officers, elected officials, and employees as additional insureds as their interest may appear under this Agreement. The Licensee shall provide the Village with a blanket additional insured endorsement. The Licensee's insurance shall be primary, and any Village policies of insurance shall be deemed non-contributory. Such insurance shall be issued by companies authorized to do business in the State of Illinois and approved by the Village. The insurance coverages shall include, but not necessarily limited to, the following:
 - i) Worker's Compensation Insurance with limits as required by the applicable statutes of the State of Illinois. The Employer's Liability coverage under the Worker's Compensation policy shall have limits of not less than \$500,000 each accident/injury; \$500,000 each employee/disease; \$500,000 policy limits.
 - ii) Commercial General Liability Insurance protecting the Licensee against any and all public liability claims which may arise in the course of the license period. The limits of liability shall not be less than \$1,000,000 each occurrence bodily injury/property damage combined single limit and \$2,000,000 aggregate bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the Village as an additional insured.
 - iii) Commercial Automobile Liability Insurance covering the Licensee's owned, non-owned, and leased vehicles which protects the Licensee against automobile liability claims whether on or off of the Village's premises with coverage limits of not less than \$1,000,000 per accident bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the Village as an additional insured.

- iv) Umbrella or Excess Liability Insurance with limits of not less than \$1,000,000 per occurrence bodily injury/property damage combined single limit. The Umbrella or Excess coverage shall apply in excess of the limits stated in Subsections (ii) and (iii) above and shall either include an endorsement naming the Village as an additional insured or provide "following form" coverage for the primary insurance.
- v) The foregoing minimum insurance coverages shall be increased upon thirty (30) day prior written request by the Village to the Licensee but no more frequently than once every three (3) years and only when increases in coverage in a category become routine in the insurance industry in Illinois for the specified coverage. Written notice of a routine increase in coverage provided by the Village's Pool Insurance manager IRMA, or any successor manager, shall be prima facie evidence of a required increase. If the Licensee disagrees with the proposed increase it shall do so in writing no later than twenty-one (21) days after it receives notice of an increase which writing shall explain the basis of the objection. If the Parties are unable to reach an agreement with regard to the amount of an increase, the Village and the Licensee's insurance companies shall select a qualified third person insurance manager who shall designate the amount of the coverage. Such designation shall be final, non-appealable, and binding for the next three (3) years and the Parties shall equally split the cost of the third-person insurance manager.
- b) Copies required. The Licensee shall provide certificates of insurance reflecting the requirements of this Section to the Village within thirty (30) days following notification that its application is complete, but no more frequently than once annually.
- c) Upon receipt of notice from its insurer(s) the Licensee shall provide the Village with thirty (30) days' prior written notice of cancellation of any required coverage, the Licensee shall obtain and furnish to the Village evidence of replacement insurance policies meeting the requirements of this Section. In the event that the Licensee fails to obtain or produce evidence of said replacement insurance or elect to self-insure as described in Subsection (d) of this Section, any permits issued pursuant to this Article shall, without any further notice, be null and void.
- d) Self-insurance. The Licensee may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection (a) of this Section. The Licensee that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under Subsection (a) of this Section or the requirements of Subsections (b), (c) and (d) of this Section. The Licensee that elects to self-insure shall provide the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit required under Subsection (a) of this Section, such as evidence that the Licensee is a "private self-insurer" under the workers' compensation act. Self-insurance shall be primary, and any Village policies of insurance shall be deemed non-contributory. Self-insurance shall only be allowed with the Village's written approval which shall not be unreasonably withheld.

- e) Effect of insurance and self-insurance on utility's liability. The legal liability of the Licensee to the Village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies, self-insurance, or by the recovery of any amounts thereunder.
- f) The Licensee shall make certain that all Supplements are covered by the insurance required by this Section 15.

~~14)~~ **16) INDEMNIFICATION:** The Licensee shall defend, indemnify, and hold harmless the Village, its officers, agents, employees, and elected officials, from any loss, damage, demand, liability, cause of action, fine, judgement, or settlement, together with all costs and expenses related thereto (including reasonable expert witness and attorney fees), that may be incurred as a result of bodily injury, sickness, death or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with the use or occupancy of the Village's improvements or right-of-way associated with such improvements by the Licensee or its employees, agents, or contractors arising out of the rights and privileges granted under this Agreement, the Village ROW Policy, and any federal, state, county, and local laws and regulations. The Licensee has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the negligence or willful misconduct of the Village, its officers, agents, employees, and elected officials. Neither Party will be liable for consequential, indirect, punitive, incidental, or special damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise, however caused, based on any theory of liability. The indemnification provisions set forth in this Section 16 of this Agreement shall remain in effect for any claims based on occurrences during the Term and any post-Term maintenance windows. To the extent that the law permits this Section be reciprocal, the Parties agree that it shall be.

~~15)~~ **17) RESERVATION OF IMMUNITIES:** Nothing in this Agreement shall be interpreted or constitute a waiver, release, or to otherwise compromise the Village's common law or statutory privileges or immunities which are fully reserved.

~~16)~~ **18) THIRD-PERSON BENEFICIARIES:** There are no third-person beneficiaries or parties of this Agreement.

~~17)~~ **19) SECURITY:** Prior to performing any work in the ROWs, the Licensee shall establish a security fund in the amount of Twenty-Five Thousand Dollars (\$25,000), which shall be provided to the Village in the form, at the Licensee's election, of cash, bond, or an unconditional letter of credit acceptable to the Village. This security fund shall serve as security for those purposes set forth in the Village ROW Policy, including, but not limited to the installation of the Facilities in compliance with applicable plans, permits, technical codes, and standards, the proper location of the Facilities as specified by the Village, restoration of the ROWs, and other property affected by the construction or to satisfy any claims or damages. The Village may draw on the letter of credit, bond, or cash for the reasons set forth in this Agreement and require replenishment by the Licensee in accordance with said Policy.

~~18)~~20) DUTY TO PROVIDE INFORMATION: Within fifteen (15) days of a written request from the Village, the Licensee shall furnish any information requested that is reasonably related to this Agreement, the License granted hereunder, and any business activities related to the License or business operations of the Licensee in the Village.

~~19)~~21) NO ENCUMBRANCES: The Licensee shall not place or allow any liens, mortgages, security interests, pledges, claims of others, equitable interests, or other encumbrances to attach to or be filed against title to the ROWs.

~~20)~~22) TAXES: Nothing contained in this Agreement shall be construed to exempt the Licensee from any fee, tax, property tax levy, or assessment, which is or may be hereinafter lawfully imposed on it relative to its use of the ROWs or its operation of the Facilities.

~~24)~~23) VIDEO PROGRAMMING: The Licensee shall notify the Village if it intends on providing cable-television content over the Facilities to subscribers within the Village. If required by law, the Licensee will enter into a cable-franchise or an open video system franchise agreement with the Village in the event the Licensee does provide cable-television content over its Facilities.

~~22)~~24) REMOVAL, RELOCATION, OR MODIFICATIONS OF UTILITY FACILITIES: Within one hundred and twenty (120) days following written notice from the Village, the Licensee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any part of its Facilities within the ROWs whenever the Village has determined, in the exercise of its governmental proprietary rights and powers, that such temporary or permanent removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Village improvement in or upon, or the operations of the Village in or upon, the ROWs. In the event that relocation of any or all of the Facilities is required and the Village and the Licensee are unable to identify a feasible alternative to relocation within the one hundred and twenty (120) day period, then the Village may terminate this Agreement, without penalty or payment to the Licensee, solely with respect to the portion of the ROWs required by the Village for the above reasons or other public purposes.

In the event the Licensee is required to disconnect, relocate, remove, change, or alter the position of part or all of its Facilities from the ROWs and fails to do so within the time delineated herein, the Village may make or cause to be made such disconnection, relocation, removal, change, or alteration, and the Licensee shall be liable to the Village for all costs regarding same. The Village may either demand payment from the Licensee, who agrees to pay the reasonable costs of such relocation or removal upon written demand and receipt by the Licensee of all invoices and documentation supporting the actual costs incurred by the Village, or demand payment from the security posted by the Licensee, which payment must be received by the Village within thirty (30) days of demand and receipt by the Licensee of all invoices and documentation supporting the actual costs incurred by the Village.

Removal of Unauthorized Facilities: Within sixty (60) days following written notice from the Village, the Licensee shall either (i) present evidence that the facilities

were indeed authorized, or (ii) at its own expense, remove all or any part of any unauthorized facilities or appurtenances from the ROWs. A facility is unauthorized and subject to removal in the following circumstances:

- 1) Upon expiration or termination of this Agreement or permit obtained by the Licensee, unless otherwise permitted by applicable law;
- 2) If the facility was constructed or installed without the prior grant of a license and permit;
- 3) If the facility was constructed, installed, or maintained in violation of this Agreement or the Village ROW Standards and not otherwise approved by the Village; or
- 4) If the facility was constructed or installed at a location not permitted by any permit obtained by the Licensee.

If the Licensee installs its Facilities in a ROW without a permit for that location, the Licensee agrees to pay a penalty payable to the Village in the sum of One Thousand Dollars (\$1,000.00) per month due on the first day of each month regardless of the amount of time the Licensee's Facilities remain in the ROW during that month until removed or permitted. Payment of the penalty shall not authorize the presence of the Facilities in the specific site without a permit. No action or inaction by the Village with respect to unauthorized use of any Village ROW shall be deemed to be a ratification or an unauthorized use.

Underground Relocation of Facilities: The Licensee shall, within a reasonable amount of time after the issuance of a permit following request of the Village, remove, modify, or relocate to underground all Facilities installed within the ROWs. The Licensee shall bare the sole costs associated with the underground relocation, including but not limited to excavation, installation, maintenance, and restoration of any affected areas. The Licensee shall obtain all necessary permits and adhere all federal, state, county, and local regulations while implementing the underground infrastructure. The Village retains the right to make such requests for underground relocation when deemed necessary, at the sole discretion of the Village, for aesthetic, safety, or environmental reasons.

Emergency Removal or Relocation of Facilities: The Village retains the right and privilege to disconnect, cut, move or remove any part of the Licensee's Facilities located within the ROWs of the Village, as the Village may reasonably determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Village shall attempt to notify the Licensee, if known, prior to cutting or removing any part of the Facilities and shall notify the Licensee after cutting or removing any part of the Facilities by calling Licensee's NOC, whose phone number can be found in Section 27 below.

~~23)~~25) TERMINATION: The Village may terminate this Agreement and the License granted herein for any of the following reasons:

- (1) Failure to cure a breach of this Agreement or noncompliance with the Village ROW Policy after receipt of written notice and a thirty (30) day cure

period. In instances where a cure has been commenced, but cannot reasonably be completed within the thirty (30) day cure period, the cure period may be extended by mutual agreement of the Parties; or

- (2) The Licensee's physical presence or presence of the Licensee's Facilities on, over, above, along, upon, under, across, or within the ROWs presents a direct or imminent threat to the public health, safety, or welfare; or
- (3) The Licensee's failure to construct the Facilities substantially in accordance with the permit and approved plans.

Upon termination of this Agreement for any reason, the Licensee shall, within one hundred and eighty (180) days of written notice from the Village, remove its Facilities from all Village ROWs and restore all ROWs as required herein other than any Facilities which the Village may permit to be abandoned in place.

The Licensee may terminate one or more of the Facilities locations pursuant to this Agreement by giving at least thirty (30) days written notice. The Licensee will not be subject to any penalty or fee for terminating such Facilities location prior to the end of the term of this Agreement.

~~24)~~**26) NO WAIVER:** The waiver by one Party of any breach of this Agreement or the failure of one Party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

~~25)~~**27) NOTICES:** All notices hereunder shall be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice) and notice shall also be sufficient by email to either Party as of the date of transmission if submitted prior to 6:00 PM on a business day, or on the subsequent business day if submitted after 6:00 PM or on a non-business day. :

LICENSOR:
Village of Wayne
Attn: Village Clerk
5N430 Railroad St.
Wayne, IL 60184
Email: clerk@villageofwayne.org

Courtesy Copy to:

LICENSEE:
Lumos Fiber of Illinois, LLC

4100 Mendenhall Oaks Pkwy, Suite 300
High Point, NC 27265
Attn: Chief Network Officer
Email:

Courtesy Copy to:
AJ Brown at AJ.Brown@lumosfiber.com

LICENSEE NOC PHONE NUMBER: (336) 886-3630

Either Party may change the addressee and/or location for the giving of notice to it by providing thirty (30) days' prior written notice to the other Party.

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

~~26)~~28) SEVERABILITY: In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereto.

~~27)~~29) LAW AND VENUE: This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Illinois. The forum for any legal disputes between the Village and Licensee shall be DuPage County, Illinois.

~~28)~~30) SECTION HEADINGS: The Section headings and references are for the convenience of the Parties and are not intended to limit, vary, define, or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

~~29)~~31) INTEGRATION: This Agreement together with all exhibits and attachments thereto, constitute the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Village or the Licensee, and all amendments hereto must be in writing and signed by the appropriate authorities of the Village and the Licensee.

~~30)~~32) AMENDMENTS: This Agreement represents the entire agreement between the Parties. No oral changes or modifications of this Agreement shall be permitted or allowed. This Agreement, and any exhibit attached hereto, may be modified or amended only by written instrument properly executed by the Licensee and the Village or their successors in interest except in the limited instances where this Agreement allows minor modifications. Execution of any amendment by the Village shall first have been authorized by the ordinance or resolution duly adopted by the Board of Trustees of the Village of Wayne.

~~34)~~³³⁾ SUCCESSORS AND ASSIGNEES: The terms and conditions of this Agreement shall apply to and bind and inure to the benefit of the Village, the Licensee and Village-approved successors and assignees.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

Village of Wayne, an Illinois Municipal Corporation

BY:

Name: _____

Title: _____

Date: _____

LICENSEE:

Lumos Fiber of Illinois, LLC

BY:

Name: _____

Title: _____

Date: _____

EXHIBIT "A"

BUSINESS DISCLOSURE AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF)

BUSINESS DISCLOSURE AFFIDAVIT
VILLAGE OF WAYNE

The undersigned, _____, having been duly sworn on oath, states as follows:

1. That this affidavit is made in support of Lumos Fiber of Illinois, LLC's (the "Licensee") desire to construct, install, attach, operate, repair, maintain, and remove fiber telecommunications facilities in and/or upon the Village's public rights-of-way (the "ROWS") within the Village's boundaries.
2. That the Licensee is a validly existing limited liability company that remains in good standing with and is organized under the laws of the State of Illinois.
3. That Licensee's registered business address is located at 4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265; and the following is an exhaustive true and accurate list of all Members:

Gridiron Fiber License, LLC is the sole member of Lumos Fiber of Illinois, LLC.
4. That Licensee is certified and authorized by all applicable governmental agencies to construct, install, attach, operate, repair, maintain, and remove fiber telecommunications facilities in and/or upon the Village's public ROWs.
5. That Licensee will, at all times, remain in compliance with all applicable Federal, State, and Local Laws, Ordinances, Resolutions, and Rules and Regulations.
6. Under penalty of perjury, Licensee certifies that 99-4021296 is its correct Federal Taxpayer Identification number.
7. That the undersigned is an authorized representative of Licensee with the authority to make this affidavit and has had the opportunity to review the foregoing statements with legal counsel.

By: David Smith

Its: Chief Network Officer

Date:

SUBSCRIBED and SWORN to
before me this _____ day of _____

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Notary Public

