

ITEM RES 2015-6069

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
2/10/2015

SUBJECT:	SUBMITTED BY:
License Agreement for use of Village Rights-of-Way	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing execution of a license agreement with Lighttower Fiber Networks for the use of the Village's rights-of-way for the installation, operation and maintenance of an underground fiber optic telecommunications cable system.

STRATEGIC PLAN ALIGNMENT

The goals for 2014 to 2018 identified *Exceptional Municipal Services*.

FISCAL IMPACT

Lighttower Fiber Networks will pay the Village \$2,500.00 for a license fee.

RECOMMENDATION

Approval on the February 10, 2015 consent agenda.

BACKGROUND

Lighttower desires to install, operate and maintain underground fiber optic telecommunications cables within the Village's rights-of-way. The License Agreement would allow Lighttower to do so. Section 253 of the Telecommunications Act of 1996 (47 U.S.C. 253) provides that the Village may not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Further, the Illinois Telephone Company Act (220 ILCS 65/4) authorizes telecommunications carriers, such as Lighttower, to construct, maintain, alter and extend its facilities along, upon, under and across any highway, street, alley, or public right-of-way dedicated to utility purposes, so long as it does not inconvenience or disturb the public in the use thereof.

The key terms of the amendment are as follows:

- The term of the License Agreement would be five years from the date of the execution by the Village. The License Agreement may be renewed for successive five year terms upon written consent of the Village and Lighttower.
- Lighttower will pay a \$2,500.00 license fee for the initial term, and the parties will agree upon a renewal fee at the time of any such renewal.

- The License Agreement is not specific to one location as Lightower has indicated a desire to install in several locations throughout the year. However, Lightower must submit a permit application, pay the applicable permit fees, and obtain a permit for each location where the cables will be installed. The Village will approve each proposed location.
- Lightower shall install the fiber optic cables underground (no above ground facilities are allowed under this Agreement). They will install the cables in the Village's rights-of-way in a manner not to inconvenience or disturb any of the Village's public utility infrastructure or any other permitted or authorized users of the rights-of-way.
- Lightower must post security to insure compliance with the License Agreement and the Village's ROW Standards.
- Lightower is required to restore the rights-of-way to the same condition as before the installation, maintenance or repair.
- The Village can require Lightower to relocate or remove its cables in certain circumstances.

ATTACHMENTS

Resolution

License Agreement

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF A LICENSE
AGREEMENT BETWEEN LIGHTOWER FIBER NETWORKS II, LLC
AND THE VILLAGE OF DOWNERS GROVE
FOR USE OF VILLAGE RIGHTS-OF-WAY**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain License Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Lightower Fiber Networks II, LLC (the “Licensee”), for the use of Village rights-of-way for the installation, operation and maintenance of an underground fiber optics telecommunications cable system, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest:

Village Clerk

**LICENSE AGREEMENT BETWEEN LIGHTOWER FIBER NETWORKS II, LLC
AND THE VILLAGE OF DOWNERS GROVE
FOR USE OF VILLAGE RIGHTS-OF-WAY**

THIS LICENSE AGREEMENT is entered into by and between LIGHTOWER FIBER NETWORKS II, LLC, located at 350 N. Orleans St., Chicago, IL (hereinafter referred to as “the Licensee”), and the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, (hereinafter referred to as the “Village”), for the use of Village rights-of-way for the installation, operation and maintenance of an underground fiber optic telecommunications cable system.

WHEREAS, the Village is the exclusive owner of certain public rights-of-way, and has approved official standards for the construction of facilities on the public rights-of-way; and

WHEREAS, the Village is authorized to grant, renew and revoke licenses for the use of the public rights-of-way for the installation, operation and maintenance of telecommunications facilities within its municipal boundaries; and

WHEREAS, Licensee desires to utilize portions of the public rights-of-way within the boundaries of the Village (the “ROWS”) for the limited purpose of installation, operation and maintenance of underground conduit and fiber optic telecommunications cables subject to the provisions of this License Agreement; and

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

WHEREAS, the Village has the authority to enter into this License 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 License Agreement is in the best interests of the Village, its residents, and the public; and

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

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, the Licensee and the Village agree as follows:

1. **Recitals.** The above recitals are hereby incorporated into this License Agreement as if fully set forth in this section 1.
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 Licensee for the use of the ROWs to install, operate and maintain underground conduit and fiber optic telecommunications cables (the “System”). The License granted by this License 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 Licensee, the Village shall not be obligated to bring a forcible entry and detainer action to terminate Licensee's rights hereunder. The rights granted to Licensee by the Village are and shall be at all times subordinate to the Village's right to ingress and egress and use of the public ROWs.

3. **Term; Payments.** The term of this License Agreement shall be for a period of five (5) years, beginning on the date approved by the Village Council and ending five (5) years thereafter, unless otherwise sooner terminated as provided for herein. For the initial term, Licensee shall pay a license fee in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) to the Village prior to the issuance of any permits. This License Agreement may be renewed by mutual agreement of the parties for successive five (5) year terms provided that Licensee is in full compliance with the terms and conditions of this License Agreement at the time of renewal. Licensee shall make written request for renewal of this License 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. In the event the parties cannot agree upon an amount for the License Fee for a renewal term, this License Agreement shall terminate and Licensee shall remove its System from all Village ROWs and restore all ROWs as required herein. Licensee shall also be required to pay any applicable permit fees for each permit issued.

4. **Title; 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 Licensee's intended use. Licensee assumes all risks associated with the placement, operation and maintenance of the System within the ROWs and suitability of the ROWs for its System. 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 adverse claims concerning the title, boundaries or condition of the ROWs.

5. **Location.** The location of the System shall be as approved by the Village's Director of Public Works or designee. Licensee shall provide the Village with an accurate map "as built" certifying the proposed locations of the System within the ROWs each time it submits a permit application. Licensee shall provide an updated map "as built" each time any location changes are made to the System. Unless otherwise stated on a permit issued by the Village, Licensee shall not locate the System 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. Licensee shall relocate, at its sole cost and expense, any part of its System that is not located in compliance with the permit requirements.

6. **Use of ROWs.** In its use of the ROWs and any work to be performed thereon, 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 Downers Grove Municipal Code, and the Village Council Policy entitled "Standards for the Construction of Facilities on the Public Right-of-Way" dated 11-6-07, as may be amended from time to time ("the Village ROW Policy"). In the event of a conflict between this License Agreement and the Village ROW Policy, the terms and conditions of this License Agreement shall control.

Licensee shall use and occupy the ROWs to install, operate and maintain the System, which shall be limited to underground conduit and fiber optic telecommunications cable 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 Licensee's System shall be underground. Licensee is not permitted to install above ground equipment, wiring, telephone poles, pipes or other related equipment or appurtenances. Any unauthorized or impermissible use of the ROWs shall be deemed to be a material breach of this License Agreement.

Licensee warrants that the installation of the System will be performed without any trenching or open trenching, but rather by directional boring. Licensee shall not disturb any pavement for the installation, operation, maintenance or removal of its System. All movement and storage of equipment and materials shall be confined to the area 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.

7. **Operation and Maintenance.** Except for Emergency Maintenance, Licensee shall not perform work on, nor make any alterations to, the ROWs without first having paid any applicable permit fees and obtained the necessary permit(s) from the Village, including any construction permits for telecommunications facilities as required by law and the Village ROW Policy. Licensee shall obtain a permit for each separate location.

Maintenance of the System within the ROWs shall be the responsibility of Licensee. The System 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 Village reserves the right to enter upon and repair any or all damage to the areas surrounding the licensed premises, and if such damage is caused by Licensee, then the actual, reasonable and documented cost of such repair shall be the responsibility of the Licensee.

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

8. **Marking.** Prior to and during any installation or relocation of any underground cables or utility lines, 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 Licensee's System 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 Licensee's System. Licensee agrees that it will become a member of J.U.L.I.E. as a requirement of this License Agreement and that such a system is designed to alert Licensee to planned work in the rights-of-way, so that Licensee can mark the location of its facilities to avoid damage. The Village shall have no obligation to alert Licensee to proposed work by itself or others, other than as a participating member of the J.U.L.I.E. system.

9. **Public Safety.** Licensee or other person 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 Licensee is, or will be, hazardous to the public or the property, Licensee, upon written notice from the Village, shall install commercially reasonable safety devices or make commercially reasonable modifications at Licensee's sole expense to render the ROWs safe for, and compatible with, public use. In the event 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, the Licensee agrees to pay the actual costs of such improvements upon written demand, or the Village may terminate this License Agreement, with all rights of 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.

10. **Restoration of ROWs.** Within ten (10) days after initial construction operations have been completed or after repair, relocation or removal of the System, 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, Licensee shall temporarily restore any disturbed property. Such temporary restoration shall be at Licensee's sole expense and 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 Licensee or any person acting on Licensee's behalf, except for backfilling which shall be a five (5) year period, 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 Licensee, its officers, agents, employees, contractors, subcontractors, successors, and assigns, except to the extent any of the foregoing are caused by the negligence 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 with sod. All open excavations necessary for the installation, repair, relocation, maintenance or removal of the System shall be properly backfilled, and any asphalt pavement or PCC concrete pavement or sidewalk shall be replaced with like-kind and quality 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 Licensee at its sole expense in a condition satisfactory to the Village. 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 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 either demand payment from Licensee, who agrees to pay the reasonable costs of such restoration or repairs upon written demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village, or demand payment from the security posted by Licensee, which payment must be received by the Village within thirty (30) days of demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village.

11. **Environmental.** 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. Licensee will take all reasonable steps to assure that Licensee will not release any regulated material in violation of any federal or state environmental law on the ROWs. Licensee, at its sole cost and expense, shall remediate, remove, clean up or abate in accordance with federal or state law, or the 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 Licensee. In the event of a release of a regulated material in violation of a state or federal law on the ROWs by Licensee, or any claim or cause of action brought against the Village regarding such release, the indemnification provided for in Section 15 shall apply.

12. **Damage to Licensee's System.** Unless directly and proximately caused by the willful, intentional or malicious acts of the Village, the Village shall not be liable for and Licensee expressly waives all claims for any damage to or loss of Licensee's System 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.

13. **Licensee Form of Business Disclosure.** Licensee agrees to complete and maintain on file with the Village a current Disclosure Affidavit, attached as Exhibit "A" to this License Agreement.

14. **No Transfer or Assignment.** This License Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. During the term of this License Agreement, Licensee acknowledges and agrees that it does not have the right or authority to transfer or assign this License Agreement or any interest herein without the prior written consent of the Village; provided, however that 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 License Agreement to any successor entity or affiliate or subsidiary of Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee. Any such written consent required under this Section 14 may not be unreasonably withheld. 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 System or vacates or ceases to use the System, Licensee shall, nevertheless, remain liable to the Village under the provisions hereof, until said System herein authorized is removed, and the public ROWs are restored as herein required. Acceptance of payment from an entity or person other than Licensee shall not constitute a waiver of this provision.

15. **Indemnity/Hold Harmless.** To the fullest extent permitted by law, Licensee shall defend, indemnify, keep and hold harmless the Village and its officials, officers, employees and agents from and against all injuries, deaths, losses, damages, claims, demands, suits, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, which may arise out of, or result from, directly or indirectly, any negligent, careless or wrongful acts or omissions or from the reckless or willful misconduct of Licensee, its affiliates, officers, employees, agents, contractors or subcontractors in the installation, operation, relocation, repair, maintenance or removal of the System or Licensee's use of the ROWs, and in providing or offering service over the System.

Licensee shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, Licensee shall, at its own expense, satisfy and discharge the same. This License Agreement shall not be construed as requiring the Licensee to indemnify the Village for its own negligence. The indemnification required hereunder shall not be limited by the amount of the insurance to be maintained hereunder.

16. **Insurance.** Licensee shall maintain, at its own expense, the following minimum levels of insurance until the System is removed from the ROWs and the ROWs have been properly restored as required herein:

1. Workers Compensation – Statutory limits
2. Employers Liability - \$1,000,000 per employee and \$1,000,000 per accident
3. Commercial General Liability, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X," "C," and "U" coverages) and products-completed operations coverage with limits not less than:
 - i) Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - ii) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - iii) Five million dollars (\$5,000,000) for all other types of liability
4. Automobile Liability for all owned, hired and non-owned automobiles - \$1,000,000 each Accident

If the Licensee is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this section.

Prior to commencing work on the System described herein, Licensee shall furnish the Village with the appropriate Certificates of Insurance, and applicable policy endorsements. Licensee shall have the Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability policies endorsed to add the "Village of Downers Grove, its officers, officials, agents and employees" as "additional insureds". Such insurance afforded to the Village shall be endorsed to provide that the insurance provided under each policy shall be Primary and Non-Contributory.

Commercial General Liability Insurance required under this section shall be written on an occurrence form and shall include coverage for Products/Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to defense and indemnity obligations. The limit must be on a "Per Project Basis". Commercial General Liability, Employers Liability and Automobile Liability Insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by Umbrella and/or Excess Liability policies. Workers' Compensation coverage shall include a waiver of subrogation against the Village.

All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with Licensee in the State of Illinois. (All insurance carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.)

All insurance policies shall contain a provision that coverages and limits afforded hereunder shall not be canceled, materially changed, non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the Village. Renewal certificates shall be provided to the Village not less than five (5) days prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to the Village and shall provide satisfactory evidence of compliance with all insurance requirements. The Village shall have the right to examine any policy required and evidenced on the Certificate of Insurance.

17. **Security.** Prior to performing any work in the ROWs, 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 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 System in compliance with applicable plans, permits, technical codes and standards, the proper location of the System 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 or withdraw cash for the reasons set forth in the Village ROW Policy and require replenishment by Licensee in accordance with said Policy.

18. **Duty to Provide Information.** Within fifteen (15) days of a written request from the Village, Licensee shall furnish any information requested that is reasonably related to this License Agreement, the License granted hereunder, and any business activities related to the License or business operations of Licensee in the Village.

19. **No Encumbrances.** Licensee shall not place or allow any liens, mortgages, security interests, pledges, claims of others, equitable interests, or other encumbrances to attach to or to be filed against title to the ROWs.

20. **Taxes.** Nothing contained in this License Agreement shall be construed to exempt 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 System.

21. **Video Programming.** Licensee shall notify the Village if it intends on providing cable television content over the System to subscribers within the Village. If required by law,

Licensee will enter into a cable franchise or an open video system franchise agreement with the Village in the event Licensee does provide cable television content over its System.

22. **Removal, Relocation, or Modifications of Utility Facilities.** Within thirty (30) days following written notice from the Village, Licensee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any part of its System within the ROWs whenever the Village has determined that such 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 System is required and the Village and Licensee are unable to identify a feasible alternative to relocation within the thirty (30) day period, then the Village may terminate this License Agreement, without penalty or payment to Licensee, solely with respect to the portion of the ROWs required by the Village for the above reasons or other public purposes.

Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the Village, Licensee shall, 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 License Agreement or permit obtained by Licensee, unless otherwise permitted by applicable law;
- 2) If the facility was constructed or installed without the prior grant of a license or permit;
- 3) If the facility was constructed, installed or maintained in violation of this License Agreement or the Village ROW Standards; or
- 4) If the facility was constructed or installed at a location not permitted by any permit obtained by Licensee.

Emergency Removal or Relocation of Facilities. The Village retains the right and privilege to disconnect, cut, move or remove any part of Licensee's System located within the ROWs of the Village, as the Village may 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 Licensee, if known, prior to cutting or removing any part of the System and shall notify Licensee after cutting or removing any part of the System.

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

23. **Termination.** The Village may terminate this License Agreement and the License granted herein for any of the following reasons:

- 1) Licensee made fraudulent, false, misrepresenting, or materially incomplete statements in the permit application; or
- 2) Failure to cure a breach of this License Agreement or noncompliance with the Village ROW Policy after receipt of written notice and a twenty (20) day cure period; or
- 3) Licensee's physical presence or presence of Licensee's System 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
- 4) Licensee's failure to construct the System substantially in accordance with the permit and approved plans; or
- 5) Failure to provide the required traffic control; and to respond to requests from the Village to correct such deficiencies within a reasonable time frame.

Upon termination of this License Agreement for any reason, Licensee shall remove its System from all Village ROWs and restore all ROWs as required herein.

24. **No Waiver.** The waiver by one party of any breach of this License 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 License Agreement and will not be construed to be a waiver of any provision except for the particular instance.

25. **Amendments.** This License Agreement represents the entire agreement between the parties. No oral changes or modifications of this License Agreement shall be permitted or allowed. Changes or modifications to this License Agreement shall be made only in writing and upon necessary and proper signature of the Licensee and the Village.

26. **Notices.** Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

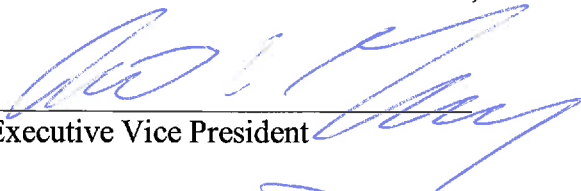
Lighttower Fiber Networks
80 Central Street
Boxborough, MA 01719
Attn: General Counsel

27. **Severability.** In the event that any provision of this License 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.

28. **Law and Venue.** This License 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 the Licensee shall be DuPage County, Illinois.

LIGHTOWER FIBER NETWORKS II, LLC

VILLAGE OF DOWNERS GROVE

By: 
Its: Executive Vice President

By: _____
Its: Mayor

ATTEST:

Secretary

ATTEST:

Village Clerk

Date: Feb. 4, 2015

Date: _____, 2015

Exhibit "A"
DISCLOSURE AFFIDAVIT

(NOTE: This Affidavit must be completely filled out and signed by the Licensee or a determination that the contract is exempt from any section must be obtained.)

I. BUSINESS STATUS STATEMENT

I, the undersigned, being duly sworn, do state as follows:

A. LIGHTOWER FIBER NETWORKS II, LLC (hereafter "Licensee") is a:
 Company Name

(Place mark in front of appropriate type of business)

_____ Corporation (if a Corporation, complete B)

_____ Partnership (if a Partnership, complete C)

_____ Individual Proprietorship (if an Individual, complete D)

X Limited Liability Corporation (if an LLC, complete C)

B. CORPORATION

The State of incorporation is _____

The registered agent of the corporation in Illinois is:

_____ Name

_____ Address

_____ City, State, Zip

_____ Telephone

The corporate officers are as follows:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

C. PARTNERSHIP OR LLC

The partners or members are as follows: (Attach additional sheets if necessary)

Sidera Networks, Inc.	80 Central Street
_____	Boxborough, MA 01719
Name	Home Address

_____	_____
Name	Home Address

_____	_____
Name	Home Address

_____	_____
Name	Home Address

The business address is 80 Central Street, Boxborough, MA 01719
Telephone: 978-264-6000

D. INDIVIDUAL PROPRIETORSHIP

The business address is _____

_____ Telephone: _____

My home address is _____

_____ Telephone: _____

E. Under penalty of perjury, LIGHTOWER FIBER NETWORKS II, LLC
(Licensee's Name)

certifies that 01-0570431 is its correct Federal Taxpayer Identification Number,
(FEIN/SSN)

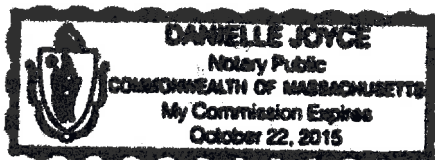
or in the case of an individual or sole proprietorship, Social Security Number.

LICENSEE

By: _____

Its: Executive Vice President

Subscribed and sworn to before me this 4 day of February, 2015.



_____ *Danielle Joyce*
Notary Public