

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
5/20/2025

SUBJECT:	SUBMITTED BY:
Master License Agreement for Use of Village Rights-of-Way - Lumos Fiber	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing execution of a Master License Agreement between Lumos Fiber of Illinois, LLC (“Lumos”) and the Village for use of the Village's rights-of-way for the installation, operation and maintenance of an underground fiber optics telecommunications system.

STRATEGIC PLAN ALIGNMENT

The goals for 2023 to 2025 identified *Exceptional Municipal Services*.

FISCAL IMPACT

Lumos will pay the Village a license fee in the amount of \$10,000.

RECOMMENDATION

Approval on the June 3, 2025 consent agenda.

BACKGROUND

Lumos desires to install, operate and maintain underground fiber optic telecommunications cables within the Village’s rights-of-way, which the License Agreement will allow them to do. Section 253 of the Telecommunications Act of 1996 (47 U.S.C. 253) provides that the Village may not prohibit or have the effect or 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 Lumos, 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.

State law provides the Village with exclusive authority to work in its right-of-ways, and the Master License Agreement governs the terms by which Lumos will be able to install their fiber optic cables in the Village right-of-ways. It is Lumos’ intent to “overbuild” the Village, which means that Lumos will be looking to install its fiber optic cables throughout the entirety of the Village. With this, Lumos has also expressed their intent to install fiber optic cables in private public utility easements, which the Village has no authority to permit or control. The Village makes no representations concerning Lumos’s authority to perform work in private public utility easements. Upon completion of Lumos’ overbuild project, Lumos should be in a position to provide high-speed internet services to Village residents with access to Lumos’ fiber optic cable system, which will lead to increased competition in the number of fiber optic internet services available to

Village residents. Currently, Comcast is the only telecommunications provider in a position to offer fiber optic telecommunication services to all Village residents.

The key terms of the agreement are as follows:

- The initial term of the License Agreement is ten 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 Lumos.
- Lumos will pay a \$10,000 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 Lumos may install in other locations after their initial project. However, Lumos must submit a permit application, pay the applicable permit fees, and obtain a permit for each location where any cables will be installed. The Village will approve each proposed location on a permit by permit basis.
- Although Lumos's work consists mostly of installation of underground fiber optic cables, the Agreement allows for aerial cable installation as well. However, it does not allow Lumos to install small cell equipment. 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.
- Lumos must post a letter of credit to insure compliance with the License Agreement and the Village's ROW Standards.
- Lumos is required to restore the rights-of-way to the same condition as before the installation, maintenance or repair.
- The Village can require Lumos to relocate or remove its cables in certain circumstances.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. ____**A RESOLUTION AUTHORIZING EXECUTION OF A MASTER LICENSE
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND LUMOS FIBER OF ILLINOIS, LLC.**

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 Master License Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Lumos Fiber of Illinois, LLC (the "Licensee"), for use of Village rights-of-way for the installation, operation and maintenance of telecommunication facilities, 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

MASTER LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is entered into by and between the Village of Downers Grove, a home rule municipality organized and existing under the laws of the state of Illinois ("Village"), and Lumos Fiber of Illinois, LLC an Illinois limited liability company ("Licensee"), for the use of Village's rights-of-way for the installation, operation and maintenance of telecommunications facilities.

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 construct, install, operate, and maintain telecommunications facilities in and/or upon the Village's public rights-of-way (the "ROWs") within the Village's boundaries, subject to the provisions of this Agreement; and

WHEREAS, the Village desires to allow Licensee to utilize the ROWs for such purposes, subject to the provisions of this Agreement; and

WHEREAS, the Village Council has determined that the establishment of a Master License Agreement for telecommunications use of public ways will properly facilitate and manage the deployment of telecommunications facilities without requiring Licensee to come before the Village Council each time it seeks approval of a site-specific permit for a facility on a Village pole or ROW; and

WHEREAS, 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 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 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 telecommunications equipment (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 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.

If Licensee intends to use the public right of way of any other governmental entity for installation of its Facilities, it shall obtain all other required permits or agreements from such entity regarding such use prior to commencing construction of the System.

This Agreement and the right it grants 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.** The term of this Agreement shall be for a period of ten (10) years, beginning on the date approved by the Village Council and ending ten (10) years thereafter, provided that Licensee is in compliance with the requirements of the Village's code and terms and conditions herein ("Initial Term"). This Agreement shall automatically renew for successive five (5) year terms ("Renewal Terms"). This Agreement may be terminated by either party at the end of the Initial Term or then current Renewal Term by providing ninety (90) days' advanced notice of termination to the other party.

4. **Fees.** Licensee shall pay an initial fee of Ten Thousand Dollars (\$10,000) upon execution of this License Agreement ("Initial License Fee").

Thereafter, for so long as (a) the Village imposes a simplified municipal telecommunications tax (or any successor tax) in the amount of 6%, or the maximum rate otherwise allowable by applicable law, as may be amended from time to time, and (b) Licensee collects and remits said tax, no recurring annual fees or other amounts shall be due to the Village for the use and occupancy of the Village's ROW's ("Tax"). On no less than a quarterly basis, Licensee shall submit in writing a confirmation of the amount of the simplified telecommunications tax remitted to the State of Illinois for the preceding quarter. Such remittance shall be provided to the Village's Finance Department via USPS or electronic mail and it shall include the Licensee's name, the contact information for the person or department responsible on behalf of Licensee for answering any questions related to the remittance, period of remittance and amount remitted.

If the Tax is no longer imposed by the Village, unless otherwise prohibited by law, Licensee shall pay an annual fee ("Annual Fee") as follows: No later than May 1st, 2026 the amount of Five Thousand Dollars (\$5,000) shall be paid to the Village per annum; thereafter, said annual fee shall be increased each year by three percent (3%) over the previous year's fee. The annual fee shall be paid to the Village no later than January 2nd of each year, Payments made after January 2nd shall include a late-penalty fee of ten percent (10%).

In addition to the Initial License Fee, and, as applicable the Tax or the Annual Fee, Licensee shall also be required to pay any applicable permit fees for each permit applied for and/or issued.

5. **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 Facilities within the ROWs and suitability of the ROWs for its Facilities. 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.

6. **Location.** The location of the Facilities shall be as approved by the Village's Director of Public Works or his or her designee. Licensee shall provide the Village with an accurate map "as built" certifying the proposed locations of the Facilities 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 Facilities. Unless otherwise stated on a permit issued by the Village, 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. Licensee shall relocate, at its sole cost and expense, any part of its Facilities that is not located in compliance with the permit requirements.

Notwithstanding the foregoing, the parties acknowledge that permit applications submitted to the Village by Licensee may identify locations that are outside of the ROWs, thus being outside the scope of this Agreement and the Village's authority to permit work in such locations ("Non-ROW Locations"). Non-ROW Locations may include, but are not limited to, public utility easements located on private property and rights-of-way under the jurisdiction of another governmental entity. By issuing a permit in connection with a permit application that discloses the installation of Licensee's Facilities in Non-ROW Locations, the Village specifically disclaims any and all warranties and representations related to Licensee's authority to enter or install Facilities in such Non-ROW Locations. Further, any permit issued by the Village in connection with a permit application submitted by Licensee that identifies Licensee's installation of Facilities in Non-ROW Locations shall not be considered or construed to be a Village grant of permission or authority to Licensee to access such Non-ROW Locations or otherwise grant Licensee authority to install its Facilities in such Non-ROW Locations. It is Licensee's sole responsibility to identify and obtain permission from the owners of all Non-ROW Locations to enter such Non-ROW Locations, and the Village shall have no duty or obligation to provide said Non-ROW Location owners any information or opinions concerning Licensee's ability to enter upon Non-ROW Locations. In accordance with Section 18 below, Licensee agrees to indemnify, defend and hold the Village harmless from any and all claims related to Licensee's anticipated or actual entrance to Non-ROW Locations, damage to Non-ROW Locations, installation of Facilities in Non-ROW Locations, or otherwise in connection with Non-ROW Locations.

7. **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”), provided however, License may seek variances or exceptions to the Villages ROW Policy on a case-by case basis with the Village’s Director of Public Works. In the event of a conflict between this Agreement and the Village ROW Policy, the terms and conditions of this Agreement shall control.

Licensee shall use and occupy the ROWs to install, operate and maintain the Facilities, which shall be limited to underground conduit and fiber optic 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 Licensee’s Facilities shall be underground, except in areas where existing similar utilities are aerial. Any unauthorized or impermissible use of the ROWs shall be deemed to be a material breach of this Agreement.

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 directional or missile boring is not possible for installation of the required Facilities, Licensee agrees to work with the Village’s Director of Public Works, or designee, to determine the method of installation to be used, and to obtain the permission of the Village. With the exception of any J.U.L.I.E. locates, Licensee shall not disturb any pavement for the installation, operation, maintenance or removal of its Facilities. 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.

8. **Installation, Operation and Maintenance.** As a condition precedent to its right to access, use or attach any of its Facilities, 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 Director of Public Works or designee a site-specific permit for each location.

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 of an 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. In the event of a dispute with the owner of private property or other utilities, upon request, evidence of Licensee's rights to occupy or utilize of private property or utilities' facilities shall be provided to the Village. Further, if Licensee proposes to install its Facilities on a non-Village owned utility pole in the ROW, Licensee shall submit its written agreement with the franchisee or licensee which owns the existing pole as part of its site-specific permit application.

The Village shall not be liable to the Licensee or its customers for any interruption of service to the Licensee or interference with the Licensee's Facilities for any reason whatsoever.

Maintenance of the Facilities within the ROWs shall be the responsibility of 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. Licensee shall use due care to ensure that no damage, beyond reasonable wear and tear, is caused to the ROWs. 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.

9. **Police Powers.** Nothing in this Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

10. **Reservation of Authority.** Nothing in this Agreement shall (A) abrogate the right of the Village to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (C) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

11. **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 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 Licensee's Facilities. 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 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.

12. **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 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 Agreement and its termination.

13. **Restoration of ROWs.** Within ten (10) days after initial construction operations have been completed or after repair, relocation or removal of the Facilities, 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, including backfilling, 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, grass seed, or mulch. 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 materials. The backfill settlement repair period shall be for twelve (12) months 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 actual and 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.

14. **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 Federal or State 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 18 shall apply.

15. **Damage to Licensee's Facilities.** The Village, its officers and employees shall not be liable for and Licensee expressly waives all claims for any damage to or loss of 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, with the exception of any loss, cost or damage proximately caused by the Village's willful misconduct.

16. **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 Agreement.

17. **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, 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 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 Licensee 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 17

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 Facilities or vacates or ceases to use the Facilities, Licensee shall, nevertheless, remain liable to the Village under the provisions hereof, until said Facilities 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.

18. **Indemnity/Hold Harmless.** To the fullest extent permitted by law, Licensee shall defend, indemnify, protect and hold harmless the Village and its officials, officers, employees and agents from and against all third party 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 Facilities or Licensee's use of the ROWs, Licensee's potential or actual use of Non-ROW Locations, and in providing or offering service over the Facilities.

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 Agreement shall not be construed as requiring the Licensee to indemnify the Village for its own negligence or willful misconduct. The indemnification required hereunder shall not be limited by the amount of the insurance to be maintained hereunder and shall survive termination of this Agreement.

19. **Insurance.** Licensee shall, at its sole expense, cause to be issued and maintained, at its sole expense, the following minimum levels of insurance until the Facilities are removed from the ROWs and the ROWs have been properly restored as required herein:

1. Workers Compensation – Statutory limits
2. Employers Liability – One million dollars (\$1,000,000) per employee and One million dollars (\$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 – One million dollars (\$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 Facilities 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.

20. **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 surety bond, 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 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 or withdraw cash for the reasons set forth in the Village ROW Policy and require replenishment by Licensee in accordance with said Policy. Such security fund shall be in addition to any additional security required to be deposited with the Village in connection with any permit in

accordance with the Village's ordinances, the Village's Municipal Code and/or any formal Village Council policy.

21. **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 Agreement, the License granted hereunder, and any business activities related to the License or business operations of Licensee in the Village.

22. **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.

23. **Taxes.** Nothing contained in this 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 Facilities, including but not limited to the "Downers Grove Simplified Municipal Telecommunications Tax".

24. **Video Programming.** 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, 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 Facilities.

25. **Removal, Relocation, or Modifications of Utility Facilities.** Within ninety (90) 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 Facilities 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, provided however, if such relocation, removal, change or alteration cannot be reasonably performed within the ninety (90) day period, if Licensee, within that period shall have commenced with due diligence to relocate, remove, change or alter its Facilities, shall be granted an extension by the Village, not to exceed one hundred twenty (120) days, to complete such work. In the event that relocation of any or all of the Facilities is required and the Village and Licensee are unable to identify a feasible alternative to relocation within the thirty (30) day extension period, then the Village may terminate this 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.

26. **Removal of Unauthorized Facilities.** Within ninety 90 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, provided however, if such relocation, removal, change or alteration cannot be reasonably performed within the ninety (90) day period, if Licensee, within that period shall have commenced with due diligence to remove its Facilities, shall be granted an extension by the Village, not to exceed thirty (30) days, to complete such work. A facility is unauthorized and subject to removal in the following circumstances:

- 1) Upon expiration or termination of this 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 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.

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 five thousand dollars (\$5,000.00) 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.

27. **Emergency Removal or Relocation of Facilities.** The Village retains the right and privilege to disconnect, cut, move or remove any part of Licensee's Facilities 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 Facilities and shall notify Licensee after cutting or removing any part of the Facilities.

In the event Licensee is required to disconnect, relocate, remove, change or alter the position of part or all of its Facilities 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.

28. **Termination.** The Village may terminate this 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 Agreement or noncompliance with the Village ROW Policy after receipt of written notice and a thirty (30) day cure period; or
- 3) Licensee's physical presence or presence of 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

- 4) Licensee's failure to construct the Facilities 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 Agreement for any reason, Licensee shall, within thirty (30) days of written notice from Licenser, remove or abandon its Facilities from all Village ROWs and restore all ROWs as required herein.

Licensee may terminate one or more of the Facilities locations pursuant to this Agreement by giving at least thirty (30) days written notice. 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.

29. **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.

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

31. **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: Village of Downers Grove
850 Curtiss St.
Downers Grove, Illinois 60515
ATTN: Village Manager

Licensee: Lumos Fiber of Illinois, LLC
Attn: Josh Many, SVP – OSP
4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC 27265

With an electronic copy to:
A.J. Brown, Chief Legal Officer: AJ.Brown@lumosfiber.com

32. **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.

33. **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 the Licensee shall be DuPage County, Illinois.

LUMOS FIBER OF ILLINOIS, LLC

By: 
Its: Chief Network Officer

Date: May 8, 2025

VILLAGE OF DOWNERS GROVE

By: _____
Its: Mayor

Date: _____, 20____

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, as a representative of the Licensee, being duly sworn, do state as follows:

A. Lumos Fiber of Illinois, LLC (hereafter "Licensee") is a:

(Place mark in front of appropriate type of business)

_____ Corporation (if a Corporation, complete B)

_____ Partnership (if a Partnership, complete C)

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

_____ Individual Proprietorship (if an Individual, complete D)

B. INC

The State of incorporation is _____

The corporate officers are as follows:

President: _____

Vice President: _____

Secretary: _____

Chief Financial Officer: _____

C. PARTNERSHIP/LLC

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

Gridiron Fiber License, LLC

4100 Mendenhall Oaks Parkway,

Suite 300, High Point, NC 27265

Name

Business Address

Telephone: 844.491.2957

D. INDIVIDUAL PROPRIETORSHIP

The business address is _____

_____ Telephone: _____

My home address is _____

_____ Telephone: _____

Under penalty of perjury, David Smith, the Chief Network Officer for Lumos Fiber of Illinois, LLC (Licensee's Name) certifies that 99-4021296 is its correct Federal Taxpayer Identification Number, (FEIN/SSN)

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

LICENSEE

By: David Smith

Its: Chief Network Officer

Subscribed and sworn to before me this 8th day of May, 2025.

Breanna E. Grandstaff
Notary Public

