

VILLAGE OF DUPO, ILLINOIS

ORDINANCE NO. 20-16

**AN ORDINANCE TO AUTHORIZE THE VILLAGE MAYOR TO ENTER INTO A
RIGHT OF WAY AGREEMENT WITH DELTA COMMUNICATIONS, LLC, d/b/a
CLEARWAVE COMMUNICATIONS**

ADOPTED BY THE
VILLAGE BOARD OF TRUSTEES
OF THE
VILLAGE OF DUPO, ILLINOIS
THIS 8th DAY OF SEPTEMBER, 2020

Published in pamphlet form by
authority of the Village Board
of Trustees of the Village of
Dupo, St. Clair County, Illinois,
this 8th day of September, 2020.

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**AN ORDINANCE TO AUTHORIZE THE VILLAGE MAYOR TO ENTER INTO A
RIGHT OF WAY AGREEMENT WITH DELTA COMMUNICATIONS, LLC, d/b/a
CLEARWAVE COMMUNICATIONS**

WHEREAS, the Village of Dupo, St. Clair County, Illinois, is a duly created, organized and validly existing municipality of the State of Illinois under the 1970 Illinois Constitution and the laws of the State of Illinois, including particularly the Illinois Municipal Code, and all laws amendatory thereof and supplementary thereto; and

WHEREAS, a duly noticed public meeting was held in the Village of Dupo, Illinois at the Dupo Village Hall, 107 N. Second Street, on July 20, 2020 at 7:00 p.m., before the Village Board of Dupo, and such meeting was held remotely due to the Governor's Executive Orders pertaining to the COVID-19 pandemic and pursuant to 5 ILCS 120/7(e)(4), and such allowed for remote attendance by the public and the Village Board; and

WHEREAS, pursuant to 220 ILCS 65/0.01 et seq., the Village of Dupo has authority to establish requirements for structures or equipment in the public right-of-way; and

WHEREAS, the Village of Dupo, Illinois and Delta Communications, LLC, d/b/a Clearwave Communications desire to enter into a Right-of-Way Agreement, to facilitate an agreement in which Delta Communications, LLC d/b/a Clearwave Communications will be given access to the public right-of-way to install fiber optic cable and necessary appurtenances in certain sections of the Village's public right-of-way, as set forth in the Right-of-Way Agreement, attached hereto as **Exhibit A**; and

WHEREAS, the Corporate Authorities of the Village of Dupo, Illinois have, after review of the Right-of-Way Agreement (**Exhibit A**), determined that entering into said right-of-way agreement with Delta Communications, LLC d/b/a Clearwave Communications, pursuant to the terms and conditions contained in **Exhibit A**, to be in the best interests of the Village and its citizens; and

WHEREAS, it is necessary that Right-of-Way Agreement (**Exhibit A**) be entered into by the Village of Dupo, Illinois and signed by the Village's current Mayor; and

WHEREAS, the Corporate Authorities of the Village of Dupo, Illinois hereby find that it is necessary, advisable and in the best interests of the Village and its citizens to authorize the entering into of the Right-of-Way Agreement (**Exhibit A**) by the Mayor of the Village of Dupo, Illinois; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF DUPO, ILLINOIS:

1. That the recitals set forth above in the preamble of this Ordinance are hereby incorporated into this Resolution as recommendations of the Village Board of Trustees of the Village of Dupu, Illinois.
2. That the Village of Dupu, Illinois is authorized to enter into the Right-of-Way Agreement between the Village and Delta Communications, LLC d/b/a Clearwave Communications in that form contained in **Exhibit A** attached hereto.
3. That the Mayor of the Village of Dupu, Illinois, on behalf of the Village, and the Village Clerk to seal, if necessary, shall execute the Right-of-Way Agreement (**Exhibit A**) and such other documents necessary for the entering into said amendment.
4. That the Mayor and Village Clerk of the Village of Dupu, Illinois are authorized to provide any such additional information and take such additional action as may be required to accomplish the amendment.

PASSED this 8th day of September, 2020 by the Village Mayor and the Village Board of Trustees of the Village of Dupu, St. Clair County, Illinois, and deposited and filed in the office of the Village Clerk in said Village on that date.

<u>Trustees</u>	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Chris Ragsdale	X	---	---	---
James Smith	X	---	---	---
Joe Basinski	X	---	---	---
Ken Phillips	X	---	---	---
Kerry Foster	X	---	---	---

APPROVED AND PASSED by the Mayor of the Village of Dupu, Illinois this 8th day of September, 2020.


 Jerry Wilson, Mayor
 Village of Dupu, Illinois

ATTEST:


 MARK NADLER, VILLAGE CLERK

(SEAL)
STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

CERTIFICATE OF PUBLICATION

I, Mark Nadler, certify that I am the duly elected and acting Village Clerk of the Village of Dupu, Illinois.

I further certify that on the 8th day of Sept, 2020, the Corporate Authorities of the Village of Dupu, Illinois, passed and approved Ordinance No. 20-16, entitled:

**AN ORDINANCE TO AUTHORIZE THE VILLAGE MAYOR TO ENTER INTO A
RIGHT OF WAY AGREEMENT WITH DELTA COMMUNICATIONS, LLC, d/b/a
CLEARWAVE COMMUNICATIONS**

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 20-16, including the ordinance and a cover sheet thereof, was prepared, and a copy of such ordinance was posted in the Dupu Village Hall, commencing on Sept 8, 2020 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also made available for public inspection upon request in the office of the Village Clerk.

DATED at Dupu, Illinois this 8th day of September, 2020.



MARK NADLER, Village Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

CERTIFICATE OF TRUE COPY

I, Mark Nadler, certify that I am the duly elected and acting Village Clerk of the Village of Dupu, Illinois, and as such I am the keeper of the books, records, files and corporate seal of said Village.

I do further certify that Ordinance No. 20-16, entitled:

**AN ORDINANCE TO AUTHORIZE THE VILLAGE MAYOR TO ENTER INTO A
RIGHT OF WAY AGREEMENT WITH DELTA COMMUNICATIONS, LLC, d/b/a
CLEARWAVE COMMUNICATIONS**

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Dupu, Illinois Village Council held on the 8th day of September, 2020.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 8th day of September, 2020.



MARK NADLER, Village Clerk

(SEAL)

EXHIBIT A

RIGHT-OF-WAY LICENSE AGREEMENT

This Right-Of-Way License Agreement (hereinafter the "Agreement") is made and entered into this 8th day of September 20 20, by and between the **VILLAGE OF DUPO**, an Illinois Municipal Corporation (hereinafter the "Village") and **DELTA COMMUNICATIONS, L.L.C.**, an Illinois Limited Liability Company, d/b/a **CLEARWAVE COMMUNICATIONS**, (hereinafter the "Licensee"), WITNESSETH;

Recitals

WHEREAS, Village owns or controls various public ways within the corporate limits of Village, including but not limited to highways, roads, streets, lanes, alleys, paths, curbs, sidewalks, or other public ways and public rights-of-way (hereinafter "Public Ways"); and,

WHEREAS, Licensee desires to utilize a portion of the Village Public Ways for the installation of a fiber optic cable and appurtenances in certain sections of said Village Public Ways. The portion of the Village Public Ways to be used by Licensee is depicted on Exhibit A, which is attached to and incorporated into the Agreement by this reference (hereinafter the "License Premises") and,

WHEREAS, the Village has agreed to grant to Licensee a non-exclusive privilege and license to use the License Premises described above, all in accordance with and subject to the terms, conditions and limitations of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants, and obligations contained herein and other good and valuable consideration received by each party, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement in their entirety.
2. **Grant of License.** The Village hereby grants to Licensee a non-exclusive license, privilege and permission to enter upon the Village Public Ways and to use such License Premises described above, (hereinafter the "License"), for the purposes hereinafter set forth, subject, however, to the terms, conditions and limitations of this Agreement. The License herein granted shall be subject to all existing utility easements, if any, located within the Village Public Ways, or any other easements, conditions, covenants or restrictions of record.
3. **Term.** Subject to the conditions herein stated, this Agreement shall be for a period of ten (10) years from and after the date of approval of this Agreement by the Village.
4. **Consideration.** The consideration to the Village for the privilege granted by this Agreement shall be the benefits to be derived by Village as a result of the installation of said fiber optic cable. Licensee has represented and warranted to the Village that

Licensee's rights hereunder are for the sole purpose of providing telecommunication services at retail, and is therefore, exempt from any franchise fee or other municipal fee that may be imposed for the right to use the Village's rights-of-way, pursuant to the Illinois Telecommunications Infrastructure Maintenance Fee Act (35 ILCS 635/1, *et seq.*) ("Act"). If the Licensee shall – within the corporate limits of the Village – engage in business operations that go beyond the "sale of telecommunications at retail," as that term and component terms are defined in Section 10 of the Telecommunications Municipal Maintenance Infrastructure Fee Act (35 ILCS 635/10), the Licensee shall immediately become liable to the Village for any service provider fee (or any other applicable fee) set by the Village's ordinances and allowed both by the laws of the State of Illinois and by the laws of the United States of America. In particular, if License should begin to provide either "cable service" or "video service," as those terms are defined in Section 21-201 of the Cable and Video Competition Law of 2007 (220 ILCS 5/21-201), within the corporate limits of Village, the Licensee shall immediately become liable to Village for the service provider fee *allowed* by Section 21-801 of the Cable and Video Competition Law of 2007 (220 ILCS 5/21-801) and by subsection (c) of Section 253 of Title 47 of the United States Code. Licensee acknowledges and agrees that it is subject to the Village's Simplified Telecommunication Tax as a user of the Rights-of-Way and agrees that all of its revenues from its services authorized herein shall be subject to the taxes and fees set forth in Article VI, Chapter 36 of the Village's Code or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law. The Village shall be entitled – not more than once every calendar quarter – to take reasonable measures to audit the services provided by Licensee within the corporate limits of the Village, to determine whether those services go beyond the "sale of telecommunications at retail," as that term and component terms are defined in Section 10 of the Telecommunications Municipal Maintenance Infrastructure Fee Act (35 ILCS 635/10). The Licensee shall promptly cooperate with the Village's request to conduct such an audit of services.

5. **Taxes.** The Licensee agrees to pay all applicable taxes including license taxes, business taxes, municipal utility taxes, video services provider fees, and other applicable taxes of the Village and failure to pay such taxes shall be considered a material breach of this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation or reimbursement of costs relating to use of the Rights-of-Way, if any, required herein or otherwise by the Village by ordinance subject to any limitations of applicable state or federal law.
6. **No Interest in Land.** Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the License Premises. The Village retains legal possession of the full boundaries of its right-of-way and the Agreement merely grants to Licensee the privilege to use the License Premises described above throughout the term of this Agreement.

7. **No Vested Right.** Notwithstanding any expenditure of money, time and/or labor by Licensee on or within the License Premises, the Agreement shall in no event be construed to create an assignment coupled with an interest or any vested rights in favor of Licensee. Licensee shall expend any time, money or labor on or in the License Premises at Licensee's own risk and peril.

8. **Limited Scope of License.** The License granted to Licensee is limited in scope to the following use or uses:

To construct, install, operate, inspect, maintain, repair, upgrade, replace and remove a fiber optic cable and any and all lines, conduits, access manholes, pull vaults, and other similar equipment and devices owned or used by Licensee (hereafter the "Equipment") in the License Premises, as depicted on Exhibit A, for the purpose *only* of engaging in the "sale of telecommunications at retail," as that term and component terms are defined in Section 10 of the Telecommunications Municipal Maintenance Infrastructure Fee Act (35 ILCS 635/10), so that the Licensee will operate *only* as a "telecommunications retailer" (as that term is also defined in Section 10 of the Telecommunications Municipal Maintenance Infrastructure Fee Act [35 ILCS 635/10]) within the corporate limits of Village.

9. **Installation.** Licensee agrees and warrants that the installation will be done and completed in a good and workmanlike manner, and at no expense to Village. Installation will be undertaken in the name of, or pursuant to contracts or agreements with, Licensee. The fiber optic cable shall be installed by directional boring where possible, except at locations where bore pits are dug and concrete pull vaults are installed. Such cable shall be installed at a minimum depth three (3) feet. The fiber optic cable shall be encased in conduit. All of the Equipment shall be installed underground and underneath the Village's water lines except for splices or hand holes. The cable shall be so placed and all work in connection with such installation shall be so performed as not to interfere with ordinary travel on the Public Way of the Village unless specifically authorized by the Village's Director of Public Works/Village Engineer, or with any water, gas or sewer pipes or other utility conduits or cable television conduits or wires then in place, or hereafter placed. In the event that any right-of-way, real property, or fixed improvement thereon shall become uneven, unsettled, damaged, or otherwise require restoration, repair or replacement because of such disturbance or damage by the Licensee, then the Licensee shall promptly, but in no event longer than thirty (30) days after receipt of notice from the Village or the property owner, and at the Licensee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was disturbed or damaged. Should adverse weather conditions, or some other conditions beyond the control of Licensee, cause a delay in completing the work, the Licensee shall promptly notify the Village or the property owner immediately upon onset of the delay. Thereafter, the Village and Licensee may extend such time for work completion to a date certain. The date extension shall take into account the weather conditions and other factors affecting the work. The Licensee shall complete the work on or before the date certain. If the Licensee fails to restore the property in accordance with the above, then the Village may, if it so desires, contract with a third

party for such restoration or utilize its own work forces, to restore such property. The Licensee shall pay all reasonable costs incurred by the Village for such restoration within twenty-one (30) days after the receipt of a written bill for such cost.

10. **Restoration.** On completion of any installation activity by Licensee or persons acting pursuant to contracts or agreements with Licensee, Licensee agrees to (a) replace and grade all topsoil removed or disturbed in connection with such installation, (b) restore all disturbed, removed, or damaged fences, roads, alleys, driveways, parkways, sidewalks and similar improvements to at least as good a condition as existing immediately preceding the Installation, including using the same type of material, and (c) reseed all grass removed in connection with any Installation.
11. **Relocation of Equipment for Village.** Upon receipt of at least sixty (60) days advance written notice, the Licensee shall, at its sole cost, relocate in or remove from the License Premises, any Equipment of Licensee when lawfully required by the Village by reason of traffic conditions, public safety, street abandonment, highway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements, or for any other similar reason. The Licensee shall in all cases have the right of abandonment of part or all of its Equipment. The Village will reasonably endeavor to provide a place to which the Equipment may be relocated, but if no such place is available, then Licensee must relocate the fiber optic cable off the Public Way to its expense. The Village shall not be liable for any costs associated with any such relocation, rerouting or removal of Licensee's Equipment.
12. **Relocation For Third Party.** The Licensee shall, on the request of any third party holding a lawful license or permit issued by Village, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the License Premises as necessary any Equipment of Licensee, provided: (A) the expense of such is paid by said third party benefiting from the relocation, including, if required by the Licensee, making such payment in advance; and (B) the Licensee is given reasonable advance written notice to prepare for such changes. For purposes of this section, reasonable advance written notice shall be no less than ninety (90) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
13. **Transferability of License.** The Licensee's right, title, or interest in the License shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Licensee, without prior written notice to Village. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Licensee in its fiber optic network in order to secure indebtedness. In the event the Licensee transfers title to the License, the Licensee shall, nevertheless, remain liable to the Village under the provisions hereof, until said cables herein authorized are removed, and the Public Way is restored as herein required. Acceptance of payment from an entity or person other than the Licensee shall not constitute a waiver of this provision.

14. **Termination.** This Agreement and the License herein granted to Licensee may be terminated by Village, if after written notice by Village to Licensee of the occurrence or existence of a default or material breach, Licensee, fails to cure, or commence good faith efforts to cure, such default or material breach within forty-five (45) days after delivery of such notice.
15. **Renewal.** This ten (10) year License shall renew upon agreement by both parties. If the parties are unable to agree upon a new agreement, then the Licensee may request authority for continued maintenance of the cables and appurtenances existing at the time of expiration of the Agreement. Any request for authority for the continued maintenance and use of the Public Ways as herein described after this Agreement expires or is otherwise terminated in any manner must be specifically obtained from the Village Board subject to the terms and conditions that may be agreed upon at that time.
16. **Removal or Abandonment Upon Termination.** At such time as this Agreement and the License herein granted to Licensee is terminated, Licensee shall cease using its equipment, and, without cost or expense to the Village, remove the cables and appurtenances and restore the Public Way and public equipment to as good a condition as existed prior to such installation and to the reasonable satisfaction of the Village's Director of Public Works/Village Engineer. Such removal and restoration shall be completed within sixty (60) days from the termination of the License. In the event of the failure, neglect or refusal of said Licensee to remove the cable and appurtenances, the Village shall have the choice of either performing said work and charging the cost thereof to the Licensee or determining that said work shall be performed by a contractor, and billing the Licensee for the cost of said contract. The cost incurred by the Village in such removal shall be promptly paid by the Licensee within sixty (60) days after a bill for costs is deposited in the mail or presented to Licensee, or the Village may proceed against the surety bond of the Licensee or pursue any other remedies provided by law. If the underground conduit cannot be removed without trenching the Public Ways, Licensee may abandon such Equipment in place if said equipment is not at or above the surface; provided, however, any cables or fiber in the conduit shall be removed.
17. **Insurance.** Licensee shall maintain at all times during the term of the Agreement, at Licensee's sole cost, a policy or policies of comprehensive general liability coverage on an occurrence basis from an insurance company licensed with the State of Illinois or other insurer approved by Licensee with at least \$1,000,000.00 single limit coverage on all risks. Such policy or policies shall provide that the coverage afforded thereunder shall not be canceled, terminated or materially changed until at least thirty (30) days written notice has been given to Village. Licensee shall name Village as co-insured and shall furnish Village with duplicate policies or certificates evidencing insurance in force as required herein prior to utilizing the License Premises. Evidence of payment of premiums shall be delivered to Village at least thirty (30) days prior to the expiration dates of each existing insurance policy. This insurance shall apply as primary insurance with respect to any other insurance

or self-insurance programs afforded to Village. There shall be no endorsement or modification of this insurance to make it excess over other available insurance, alternatively, if the insurance states that it is excess of prorated, it shall be endorsed to be primary with respect to Village.

18. **Construction and Maintenance.** Licensee agrees that the improvements described herein shall be installed and maintained at all times in a safe, neat, sightly and good physical condition and in accordance with all requirements of law. During the term of this Agreement, Licensee shall, at Licensee's sole cost and expense, maintain its facilities in the License Premises in good condition and in compliance with any applicable requirements of law. Village shall be the sole judge of the quality of the construction and maintenance and, upon written notice of Village stating in general terms how and in what manner maintenance is required, Licensee shall be required to perform such maintenance. If Licensee fails to do so, then the Village shall have the right to perform such maintenance, the full and complete cost of which shall be borne by Licensee. Licensee covenants and agrees to reimburse the Village its full cost and expense for any such maintenance. The Village shall have no obligation to mark the location of Licensee's facilities. Licensee acknowledges that it has the opportunity to become a member of the statewide "One Call" Utility Location system (JULIE), and that Licensee agrees that it will become a member as a requirement of this Agreement and that such a system is designed to alert Licensee to planned work in the Public 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 JULIE system.
19. **Subordination.** The rights granted to the Licensee by the Village are and shall be at all times subordinate to the Village's use of the Public Ways. The Licensee shall be subject to all ordinances of general applicability of the Village and such other laws and regulations of governmental bodies with regulatory authority over the Licensee or the right of way.
20. **Compliance with Law.** Licensee shall adhere to and comply with all ordinances, laws, rules and regulations that may pertain to or apply to the License Premises and the Licensee's use thereof. Licensee agrees and warrants that it has procured or shall procure any licenses, permits or like permission required by law, if any, to conduct or engage in the use of the License Premises described herein, that Licensee will procure all additional licenses, permits or like permission hereinafter required by law during the term of this Agreement, and that Licensee will keep the same in full force and effect during the term of this Agreement. Licensee shall perform under this Agreement in accordance with all applicable legal requirements.
21. **Performance Security.** Within sixty (60) days of execution of this Agreement, the Licensee shall provide to the Village a performance bond and a letter of credit in a form acceptable to the Village's Attorney. The performance bond shall guarantee the faithful performance of all terms of this Agreement. The performance bond shall be secured by an irrevocable letter of credit in the amount of Five Thousand Dollars (\$5,000.00). The letter of credit shall be maintained at the Five Thousand Dollar (\$5,000.00) level throughout the

term of this Agreement. The letter of credit shall be available to the Village to satisfy all claims, liens and/or taxes due the Village from the Licensee which arise by reason of work by the Licensee, to satisfy any actual damages arising out of a breach of this Agreement, and to satisfy any assessments under this Agreement. If the letter of credit is drawn upon by the Village in accordance with the procedures in this Agreement, the Licensee shall cause the letter of credit to be reissued in the full amount required no later than the later of thirty (30) days after the last withdrawal or the January 1st following each withdrawal by the Village. Failure to reissue the letter of credit shall be deemed a material breach of the Agreement, unless the Licensee has initiated legal action, in which the Licensee alleges and the court or agency finds that the Village's withdrawal of money from the letter of credit was improper.

22. **Indemnification.** The Licensee shall hold and save the Village, its officers, agents and employees (collectively referred to within this Section as "Village"), harmless from any and all liability and expense, including but not limited to judgments, costs and damages, and attorney's fees arising out of the existence, installation, removal, relocation, alteration, repair, maintenance, restoration and any other aspect of the cables and appurtenances; and also hold the Village harmless from any and all damages to the cables or appurtenances on account of the location, construction, alteration, repair or maintenance of any public street, sidewalk, right-of-way, bridge, underpass, subway, tunnel, vault, sewer, water main, conduit, pipe, pole and all aspects of any other utility or public facility. Except for willful or wanton conduct by the Village, the Licensee shall indemnify and hold the Village harmless from any and all damages and claims arising out of damage to the cables and appurtenances caused in whole or in part by the Village, its officers, employees and agents or by any other person(s), whether or not they have a permit from the Village and whether or not they are associated with the Village in any direct or indirect manner. Licensee waives all claims, except for willful or wanton conduct by the Village, its officers, employees and agents, against the Village, whether arising directly, by subrogation, assignment or otherwise, for any and all damages, direct or indirect, resulting from damage to the cables or appurtenances done, in whole or in part, by the Village or by any other person(s) whether or not they have a permit from the Village and whether or not they are associated with the Village in any direct or indirect manner. As part of this provision, the Licensee shall, at its own expense, defend all suits and does agree to indemnify and save harmless, except for willful or wanton conduct by the Village, its officers, employees and agents, the Village from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to the Licensee or imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of any of the installed cables or appurtenances constructed under or by virtue of this Agreement, and shall save and keep harmless the Village from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof. Notice in writing shall be promptly given to Licensee of any claim or suit against the Village which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Village. The Village shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with said Licensee in the defense of any said claim or suit. The Licensee agrees to provide notice in writing to the Village Attorney of the Village of any claim or suit

against the Licensee and/or its officers or employees which may directly affect the cable or appurtenances or directly or indirectly affect this Agreement or the property referred to herein, whether or not the Village has been made a defendant or respondent to the legal action. The Village may, if it so desires, assist in defending any such claim or suit. The Licensee further agrees that it will pay the costs incurred by the Village for the necessary defense of any suit against the Village resulting from this Agreement. The Licensee will not rely upon governmental immunity afforded to the Village. The indemnification and waiver provided in this Section shall be enforceable solely by the Village and shall not operate as an indemnification or waiver as to any third party. The provisions of this paragraph shall survive any termination or expiration of this Agreement.

23. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

To Village:
Village Clerk
Village of Dupo
107 North Second Street
Dupo, IL 62239

To the Licensee:
Roth D. Clayton
Clearwave Communications
2 N. Vine Street, 4th Floor
Harrisburg, IL 62946

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given on the third business day following mailing. Notices personally delivered shall be deemed to have been given upon delivery.

24. **No Joint Venture or Partnership.** This Agreement shall not be construed so as to create a joint venture, partnership, employment, or other agency relationship between the parties hereto.
25. **Joint and Collective Work Product.** This Agreement is and shall be deemed and construed to be a joint and collective work product of Village and Licensee, and as such, this Agreement shall not be construed against one party as the otherwise purported drafter of the same by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in the terms or provisions contained herein.
26. **No Personal Liability.** No official, director, officer, agent or employee of the Village shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of their execution, approval or attempted execution of this Agreement.
27. **Severability.** The terms of this Agreement shall be severable. In the event any of the terms or provisions of this Agreement are deemed to be void or otherwise unenforceable, for any reason, the remainder of this Agreement shall remain in full force and effect.

28. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Illinois. Venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this License agreement shall be in the Circuit in any court of competent jurisdiction in St. Clair County, Illinois.
29. **References in Agreement.** All references in this Agreement to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice versa. If either reference shall be declared invalid, such decision shall not affect the validity of any remaining portion that shall remain in full force and effect.
30. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
31. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
32. **Binding Agreement on Parties.** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns.
33. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of the Agreement.
34. **Modification.** This Agreement may be changed, modified or amended only by a duly authorized written instrument executed by the parties hereto. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in or writing herein or in a duly authorized and executed amendment hereof.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representatives as of the day and year first above written.

VILLAGE OF DUPO, ILLINOIS

DELTA COMMUNICATIONS, L.L.C.

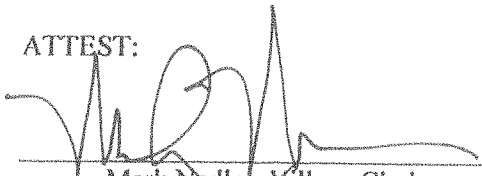
By: _____

Jerald Wilson, Mayor

By: _____

Roth D. Clayton, Engineering Manager

ATTEST:


Mark Nadler, Village Clerk

STATE OF ILLINOIS

COUNTY OF SALINE

I, the undersigned, Notary Public, in and for and residing in said County and State aforesaid, do hereby certify that Roth D. Clayton, as Engineering Manager of DELTA COMMUNICATIONS, L.L.C., an Illinois Limited Liability Company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of September, 2020


Notary Public

