

**AN ORDINANCE APPROVING A RIGHT OF WAY LICENSE AGREEMENT WITH
WABASH COMMUNICATIONS COOPERATIVE**

WHEREAS, Wabash Communications Cooperative, an Illinois not-for-profit Corporation, d/b/a Wabash Communications Cooperative (“Wabash Communications”) has requested that the City of Mt. Vernon grant it a non-exclusive license to install a fiber optic cable and appurtenances on a public ways located within the City for telecommunication purposes; and

WHEREAS, the City Council has determined that it would be in the best interest for the citizens of the City to grant such license to Wabash Communications; and

WHEREAS, officials of the City of Mt. Vernon and Wabash Communications have negotiated the terms of a Right-of-Way License Agreement; and

WHEREAS, the City Council has determined that it is appropriate to enter into a license agreement with Wabash Communications in substantially the form attached hereto as Exhibit A and in Final Form satisfactory to the City Council;

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF MT. VERNON, ILLINOIS, AS FOLLOWS:**

Section 1: That Right-of-Way License Agreement and all the terms thereof, between the City of Mt. Vernon and Wabash Communications, in the form provided hereby, is hereby approved, and the Mayor/City Manager and City Clerk are hereby authorized and directed to execute the Right-of-Way License Agreement in the name of City of Mt. Vernon. The Agreement shall be substantially in the form attached hereto as Exhibit A, and in final form satisfactory to the City Council. The City Manager shall be invested with all necessary rights and powers to enforce the provisions of the Agreement approved herein.

ORDINANCE NO. 2026-21

Section 2: If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 3: All ordinances, resolutions or orders or party thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 4: This Ordinance shall be in full force and effect immediately upon its passage and approval as provided by law.

PASSED by the City Council of the City of Mt. Vernon, Illinois on the 15th day of June, 2026

Rebecca Barbour
City Clerk – Rebecca Barbour

NAME	AYE	NAY	ABSTAIN	ABSENT	CONFLICT
Gliosci	X				
Lewis	X				
Moore	X				
Tate	X				
Young	X				

APPROVED by the Mayor of the City of Mt. Vernon, Illinois on the 16th day of June, 2026

June, 2026

APPROVED: *John Lewis*
Mayor - John Lewis

ATTEST: *Rebecca Barbour*
City Clerk – Rebecca Barbour

(SEAL)

RIGHT-OF-WAY LICENSE AGREEMENT

This Right-Of-Way License Agreement (hereinafter the "Agreement") is made and entered into this 15th day of June, 2026 by and between the **CITY OF MT. VERNON**, an Illinois Municipal Corporation (hereinafter the "City") and **WABASH COMMUNICATIONS COOPERATIVE**, an Illinois Not-for-Profit Corporation, (hereinafter the "Licensee"), WITNESSETH;

Recitals

WHEREAS, the City 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 the City's Public Ways for the installation of a fiber optic cable and associated appurtenances; and,

WHEREAS, the City has agreed to grant to Licensee a non-exclusive privilege and license to use the Public Ways 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 City hereby grants to Licensee a non-exclusive license, privilege and permission to enter upon the City Public Ways and to use such Public Ways described above, (hereinafter the "License"), for the limited 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.** This Agreement and the License granted to Licensee hereunder shall commence as of the date of this Agreement and shall continue until terminated in accordance with the terms of this Agreement.
4. **Consideration.** The consideration to the City for the privilege granted by this Agreement shall be the benefits to be derived by City as a result of the installation of said fiber optic cable.
5. **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 Public Ways. The City retains legal possession of the full boundaries of its right-of-way and the Agreement merely grants

to Licensee the privilege to use the Public Ways described above throughout the term of this Agreement.

6. **No Vested Right.** Notwithstanding any expenditure of money, time and/or labor by Licensee on or within the Public Ways, 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 Public Ways at Licensee's own risk and peril.
7. **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 Public Ways for the purpose of providing telecommunication services.

8. **Installation.** Licensee agrees and warrants that the installation will be done and completed in a good and workmanlike manner, and at no expense to City. 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. The Licensee shall use its best efforts to install its facilities at a depth of approximately three (3) feet below grade. To the extent the facilities cannot be installed at this depth, the Licensee shall, following completion of construction and restoration, provide written notice to the Village identifying the locations where the facilities have been placed at a lesser depth. The fiber optic cable shall be encased in conduit. All of the Equipment shall be installed underground. Excavations in pavement shall be inspected by the City prior to restoration. Seeding of restored areas shall not be considered as the basis of acceptance of restoration by City, and a minimum of 75% of new growth must be obtained, as determined by City in its sole discretion, prior to acceptance.
9. **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, and similar improvements to at least as good a condition as existing immediately preceding the Installation, and (c) reseed all grass removed in connection with any Installation.
10. **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 Public Ways, any Equipment of Licensee when lawfully required by the City 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, utilities, or improvements. The Licensee shall in all cases have the right of abandonment of part or all of its Equipment. The City 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 at its expense. The City shall not be liable for any costs associated with any such relocation, rerouting or removal of Licensee's Equipment.

11. **Relocation For Third Party.** The Licensee shall, on the request of any third party holding a lawful license or permit issued by City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Ways 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.
12. **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 and prior written approval by the City. 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.
13. **Termination.** This Agreement and the License herein granted to Licensee may be terminated by the City, if after written notice by City 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.
14. **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 Licensee may, but shall not be required to, remove its Equipment located in the Public Ways. With respect to any removal, Licensee shall repair all damage caused in connection with removal and shall restore the areas affected by the Equipment to the condition and appearance in which they were found, or better, prior to installation of the Equipment, reasonable wear and tear and damage by casualty excepted. Licensee may, at its option, abandon such Equipment in place.
15. **Insurance.** For as long as Licensee maintains Equipment within the City's Public Ways, Licensee shall maintain commercial general liability insurance insuring against liability for personal and advertising injury, bodily injury, death or damage to personal property, property damage liability insurance for explosion, collapse, and underground coverages with combined single limits of One Million and No/100 Dollars (\$1,000,000). In addition, Licensee shall maintain worker's compensation in statutory amounts, employer's liability insurance with combined single limits of One Million and No/100 Dollars (\$1,000,000); and automobile liability insurance, if applicable, insuring against claims for bodily injury or property damage with combined single limits of One Million and No/100 Dollars

(\$1,000,000). These insurance policies required of Licensee shall specifically provide that they are primary/non-contributory to City's separate liability insurance policies, and the limits of same shall be separately exhausted prior to exposure of any of City's separate liability limits. The insurance policies required of Licensee herein shall not provide in any part thereof that the respective liability insurance policies are to provide coverage on a pro-rata basis of their liability limits. Licensee shall provide City with evidence of such insurance in the form of a certificate of insurance prior to performing the work contemplated herein, and shall cause such insurance to remain in effect until such time as Licensee's Equipment is removed from the City's Public Ways, and agrees to cause City to be named as an Additional Insured through use of ISO additional insured endorsement form number CG 20 10 (through use of either the 11/85 or 10/93 version but not the 07/04 version) on all such policies, and will provide City with copies of the Certificates of Insurance and Additional Insured Endorsements evidencing said coverages and provisions. In connection with any claim made against City, all insurance policies required of Licensee hereunder shall further grant City the right to select and designate counsel of its own choosing in connection with any claim for which it is an additional insured. Failure of Licensee to provide or City to request and verify that coverage has been obtained by Licensee as required herein shall not be construed as a waiver by City of its right to require coverage as contractually agreed.

16. **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 Public Ways in good condition and in compliance with any applicable requirements of law. City shall be the sole judge of the quality of the construction and maintenance and, upon written notice of City 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 City 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 City its full cost and expense for any such maintenance.
17. **Audits.** The City shall have the right, in its discretion and at all reasonable times, to audit the books and records of Licensee to determine if Licensee has properly accounted to the Village the amount due to the City under the Licensee's obligation to pay taxes herein. Any underpayment of the amount to the City shall be paid to the City plus five percent (5%) of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit not to exceed five percent (5%) of the total amount of the underpayment determined in an audit. Said total sum shall be paid to the City within twenty-one (21) days after the date of issuance of any invoice for the same.
18. **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce any provision of this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including all reasonable attorneys' fees and expenses incurred in connection therewith.

19. **Reservation of Rights.** The City hereby reserves the right to use the Public Ways and all adjacent property of the City in any manner that will not interfere with the exercise by Licensee of the rights granted hereunder. The City has the right to grant other nonexclusive easements, over, along, on, or across the Public Ways, except that any such other easements will be subject to this Agreement and the rights granted hereby.
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 Public Ways 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 Public Ways 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. **Indemnification.** To the fullest extent permitted by Illinois law, Licensee agrees to defend, indemnify and save harmless City, its officers, elected and appointed officials, employees, and agents, from and against all fines, penalties, judgments, claims, losses, costs, expenses, damages (including consequential damages), injury or death, including specifically, but not limited to, City's attorneys and paralegal's fees and expenses incurred in connection therewith, as well as any disbursements, settlement costs, consultant fees, expert witness fees, investigation and laboratory fees and costs to which City or its officers, elected and appointed officials, employees and agents may become subject, insofar as they may be deemed to arise out of or are based upon this Agreement, and whether caused by the negligence of Licensee, City, their agents, or employees or otherwise, excluding however, the negligence of the City, its agents, or employees or otherwise, as it relates to the City's responsibilities and obligations under the Illinois Underground Utility Facilities Damage Protection Act. In connection with same, Licensee agrees to waive any and all limitations on contribution liability, including specifically but not limited to those provided by the *Kotecki* doctrine, which Licensee may have or be able to assert as a defense to any action which relate to or may be based upon Licensee's status as an employer under Illinois law. Examples of indemnified claims include, but are not limited to, the subparagraphs below.
- a. **Damage to Licensee's Property.** Any and all claims for loss or damage (including reasonable attorney's fees and/or lost revenue) to the Licensee's Equipment or any property belonging to or rented by Licensee, its officers, servants, agents or employees, which may be destroyed, or in any way damaged, by any cause whatsoever, including unintentional damage caused by City.
 - b. **Damage to Others.** Any claims, suits, judgments, costs, attorney's fees, loss, liability, damage or other relief, including but not limited to Workers' Compensation claims, to any person or property in any way resulting from or arising out of the existence of this Agreement and/or the existence, maintenance, use or location of Licensee's Equipment within City's Public Ways. In the event of any action against City, its officers, agents, servants, employees, boards or

commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of City's choosing at the sole cost and expense of Licensee.

- c. **Mechanic's Lien.** Any loss, liability, claim or suit arising from the foreclosure, or attempted foreclosure, of a mechanic's or materialmen's lien for goods delivered to Licensee or work performed by or for Licensee upon the Public Ways. Such indemnification shall include, but not be limited to, the City's reasonable attorney's fees incurred in connection with any such loss, claim or suit. The provisions of this paragraph shall survive any termination and/or expiration of this Agreement.

22. **Breach and Limitation on Damages.** If either party violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and the other party shall have the right to seek such administrative, contractual or legal remedies as may be suitable for such violation or breach.

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 City:

Attn: Mayor

City of Mt. Vernon

1100 Main Street

Mt. Vernon, IL 62864

To the Licensee:

Wabash Communications Co-OP

14415 Highway 45

Louisville IL 62858

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. **No Personal Liability.** No official, director, officer, agent or employee of the City 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.

26. **Joint and Collective Work Product.** This Agreement is and shall be deemed and construed to be a joint and collective work product of City 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.

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. The sole and exclusive 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 Court for Jefferson 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 constitutes 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.

CITY OF MT. VERNON, ILLINOIS

WABASH COMMUNICATIONS
COOPERATIVE

By: _____

By: _____

ATTEST: _____