
THE VILLAGE OF COAL CITY
GRUNDY & WILL COUNTIES, ILLINOIS

ORDINANCE
NO. 24-17

**AN ORDINANCE APPROVING AN AMENDED RIGHT OF WAY USE AGREEMENT
AND AN AMENDED AND NOVATED CO-LOCATION AGREEMENT
WITH SURF AIR WIRELESS, LLC**

DAVID SPESIA, President
ALEXIS STONE, Village Clerk

SARAH BEACH
TIMOTHY BRADLEY
DAN GREGGAIN
BILL MINCEY
PAMLEA NOFFSINGER
DAVID TOGLIATTI
Village Trustees

ORDINANCE NO. 24-12

**AN ORDINANCE APPROVING A FRANCHISE AGREEMENT
WITH SURF AIR WIRELESS, LLC**

WHEREAS, the Village of Coal City (the "Village") is an Illinois municipal corporation organized and operating under the Constitution and Laws of the State of Illinois; and

WHEREAS, the Village originally approved a Franchise Agreement with Surf Air Wireless, LLC by Ordinance 21-30, dated September 22, 2021; and

WHEREAS, the Village and Surf Air Wireless, LLC, desire to replace the Franchise Agreement with the Amended Right of Way Use Agreement attached hereto as Exhibit A;

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and governing the use of public right-of-way and that protect the public health, safety, and welfare of its citizens; and

WHEREAS, the Village uses the public rights-of-way within its corporate limits to provide essential public services to its residents and businesses, including traffic control signals, water, sanitary sewer and storm sewer; and

WHEREAS, other utility service providers, including electricity, telephone, natural gas and cable television and video service providers have placed, or from time to time may request to place, certain utility facilities in the public rights-of-way within the Village; and

WHEREAS, the public rights-of-way within the Village are a limited public resource held in trust by the Village for the benefit of its citizens and the Village has a custodial duty to ensure that the public rights-of-way are used, repaired and maintained in a manner that best serves the public interest; and

WHEREAS, the corporate authorities of the Village have hereto adopted uniform standards and regulations for access to and use of the public rights-of-way in the Village by utility service providers and other persons and entities that desire to place structures, facilities or equipment in the public rights-of-way; and

WHEREAS, this Ordinance is adopted pursuant to the provisions of (i) the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.*, including, without limitation, Sections 11-20-5, 11-20-10, 11-42-11, 11-42-11.2, 11-80-1, 11-80-3, 11-80-6, 11-80-7, 11-80-8, 11-80-10, and 11-80-13; (ii) Section 4 of the Telephone Company Act, 220 ILCS 65/4; (iii) the Illinois Highway Code, including, without limitation, Articles 7 and 9 thereof, 605 ILCS 5/1-101 *et seq.*; (iv) the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/1 *et seq.* and (v) Title IX, Article V of the Village of Coal City Municipal Code; and

WHEREAS, the Corporate Authorities desires, and finds it in the best interest of the health, safety, morals and welfare of the Village, to approve the Amended Right-of-Way Use Agreement, pursuant to all of the foregoing authority, with Surf Air Wireless, LLC, for the purpose of operating a broadband internet access service within the City's boundaries; and

WHEREAS, the Village originally approved a Co-Location Agreement with the predecessor-in-interest to Surf Air Wireless, LLC as authorized at the Regular Board Meeting of April 26, 2010 via a 6-0 passage, dated May 26, 2010, for to allow Surf Air Wireless (or its predecessor in interest) to place unlicensed, wireless radio facilities on Village property for the purpose of operating a wireless broadband internet system; and

WHEREAS, the Village and Surf Air Wireless, LLC now desire to amend and replace the Co-Location Agreement with the Amended and Novated Co-Location Agreement, attached hereto as Exhibit B, to update and revise the terms and conditions for Surf Air Wireless's use of Village property for the operation of a wireless and wired broadband internet system.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Coal City, Will and Grundy Counties, Illinois, as follows:

1. Recitals. The Corporate Authorities finds the foregoing recitals to be true and correct and hereby incorporates the same as though fully set forth herein. It is the Board's intent for the actions described herein to be interpreted as an exercise of the foregoing authorities to the fullest extent permitted by law.

2. Approval of Agreements.

A. The Board of Trustees hereby approves an Amended Right-of-Way Use Agreement with Surf Air Wireless, LLC, (the "Grantee") in the form attached hereto as Exhibit "A".

B. The Board of Trustees hereby approves an Amended and Novated Co-Location Agreement with Surf Air Wireless, LLC, in the form attached hereto as Exhibit "B".

3. Effective Date. This Ordinance and the agreements approved herein shall be effective as of June 1, 2024.

5. Superseding Effect. The specific terms and conditions of this Ordinance shall prevail against other existing ordinances of the Village to the extent of any conflicts. Except for the foregoing limitation, the Grantee's operation of its broadband internet access service pursuant to the Right-of-Way Use Agreement remains subject to all terms and conditions of applicable codes and ordinances of the Village of Coal City including, without limitation, building codes and regulations concerning the construction and design of public improvements.

SO ORDAINED this 22 day of may, 2024, at Coal City, Will and Grundy Counties, Illinois.

AYES: 4

NAYS: 0

ABSENT: 2

APPROVED:



David Spesia, Village President

ATTEST:



Alexis Stone, Village Clerk

EXHIBIT A

AMENDED RIGHT-OF-WAY USE AGREEMENT



May 22, 2024

Matthew T. Fritz
City Administrator
Village of Coal City
515 S. Broadway Street
Coal City, IL 60416

Re: Payments Owed Under Co-Location Agreement

Dear Mr. Fritz:

Surf Air Wireless, LLC ("Surf") plans to enter into an Amended and Novated Co-Location Agreement ("Agreement") with the Village of Coal City, replacing an existing Co-Location Agreement between Coal City and Surf's predecessor, Cyber Broadcasting, L.L.C. As we have discussed, and in consideration of Surf's past use of the Premises as described in the original agreement, Surf will pay to Coal City License Fees as defined in the Agreement back to February 1, 2022, amounting to \$21,350.59 through March 31, 2024. This amount will be paid to Coal City no later than thirty (30) days following the signing of the Agreement. In addition to the foregoing payment, Surf also agrees to voluntarily contribute \$13,700 to the Village's expenses for installing wireless cameras in three parks.

In consideration of this payment and contribution, Coal City agrees to release, waive, discharge and hold Surf harmless from (1) any further claims for license, franchise or other fees attributable to any premises or equipment specified in the Agreement or deployed by Surf in Coal City pursuant to any arrangement for access to public rights of way, and (2) prior explicit or implicit agreement obligating Surf to make any payments for wireless cameras in Coal City, in each case for the term ending on the date of this letter.

Thank you for your attention to this matter.

Sincerely,

Gene Crusie
Chief Executive Officer

ACKNOWLEDGED AND AGREED:

Matthew Fritz
City Administrator

cc: Adam Simon, Coal City Attorney

**AMENDED RIGHT OF WAY USE AGREEMENT
FOR BROADBAND INTERNET
BY AND BETWEEN
THE
VILLAGE OF COAL CITY
AND
SURF AIR WIRELESS, LLC**

This Amended Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the Village of Coal City, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “Village”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this **22** day of May, 2024 (the “Effective Date”). Village and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”. This Agreement amends a Right of Way Use Agreement entered into by the Parties on September 24, 2021 (the “Original Agreement”).

STATEMENT OF INTENT

WHEREAS, the Village intends, by adoption of this agreement, to bring about further development and operation of a Village-wide Fiber Optic Network to provide Broadband Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and corporate citizens of the Village and the public in general. Further, the Village may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Village-wide Fiber Optic Network.

WHEREAS, the parties expressly intend for this Agreement to not address cable/video communications and the operation of a cable television system; and

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1. All other capitalized terms, phrases, words and abbreviations not defined in this Section 1 shall have the meanings ascribed to them in the Lease.

“BIAS” has the meaning set forth in 47 C.F.R. §8.1 and means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service, and any service that the FCC determines, from time to time, to be functionally equivalent.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be considered a Fiber Optic Network subject to the terms of this Agreement to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems. The Fiber Optic Network shall not include any customer premises equipment.

“Franchise” means the initial authorization, or renewal thereof, issued by the Village, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means (i) the legal boundaries of the Village, and (ii) shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as depicted on Exhibit A.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Village.

“Public Way” or “Right of Way” shall have the meaning ascribed to the term “Right of Way” under the Right of Way Ordinance.

“Right of Way Ordinance,” means Chapter 95, Article V, Construction of Facilities in the Rights-Of-Way, of the Village of Coal City Code of Ordinances.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The Village hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to erect, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation

of, the Fiber Optic Network, and to provide such BIAS services over the Fiber Optic Network as may be lawfully allowed.

2.2. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). This Agreement shall automatically renew for up to four (4) additional terms of five (5) year periods thereafter (each, a “Renewal Term”), unless Grantee notifies the Village of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term. Notwithstanding the foregoing, the Parties agree and acknowledge that the term of this Agreement is intended to and shall be coterminous with the term of the Amended and Novated Co-Location Agreement entered into by and between them on May 21, 2024 (the “Co-Location Agreement”), and should the Co-Location Agreement expire or terminate this Agreement shall also expire or terminate effective as of the date of expiration or termination of the Co-Location Agreement.

2.3. 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.

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

2.5. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.6. Parking. Only to the extent the Village generally grants an exemption to other similarly situated companies, notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt from parking restrictions of the Village while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. The foregoing shall not apply to fire lanes or designated handicapped parking spaces.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions of the Right of Way Ordinance, as may be amended from time to time.

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its

Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Notwithstanding the foregoing, Grantee shall consult and cooperate in good faith with the Village about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment.

3.2.1 Use of Village Conduit. Grantee shall be given a license to use the Village's conduit on Broadway Street and any new fiber conduit that the Village may construct in the future. The Village agrees to exercise commercially reasonable efforts to prevent damage to Grantee's fiber within its conduit caused by later installed facilities. The Village, the Grantee and the third-party installer will cooperate to plan installation in a manner that reduces the risk of damage to Grantee's fiber network.

3.3. Relocation. Grantee acknowledges that the Village may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the Village, in its sole discretion, for any public projects or improvement.

3.3.1. In the event the Village requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from Village funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any. If the Village provides funds for reimbursement for relocation expenses, Grantee shall be allowed to apply for assistance and/or reimbursement.

3.3.2. Upon receipt of such notification by Village to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. Village agrees that it shall cooperate with Grantee in order to complete any relocation required under this Section 3.3.

3.4. Non-Interference. Except with respect to the performance of public works projects, the Village shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the Village with a telephone number that the Village can contact to request Grantee's coordination pursuant to this Section. In the event of any conflicts, the Village's public works projects shall always have precedence over Grantee's Fiber Optic Network.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area, depicted on Exhibit A attached hereto and incorporated by reference. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return for that portion of the installation which exceeds a Standard Installation.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the Village in conducting inspections related to these standards upon reasonable prior written request from the Village. Grantee shall engage in reasonable, non-discriminatory network management practices. A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the BIAS.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the Village shall provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property developments where undergrounding or extension of the Fiber Optic Network is required, the Village shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the Village's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement.

4.5. Subscriber Service Obligations. The Village and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS sufficient to enable

consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a publicly available, easily accessible website dedicated to the Village of Coal City Franchise Area. To the extent the disclosures applicable to the Village are identical to the disclosures applicable to Grantee's non-Village service areas, Grantee may satisfy the website notification obligations with a single, common website. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the Village.

4.6.1 Grantee will design access locations into its fiber network for all Village owned building and utility locations that are along Grantee's fiber network, as depicted on **Exhibit B** and incorporated by reference. For each designated location, Grantee will perform drop cable installation and splicing, when requested by Village.

4.6.2 Free Service to Village. Grantee shall provide the Village one free, symmetrical 1 Gbps service account for Grantee's BIAS which can be shared with each Village owned and occupied building by a virtual private network managed by Grantee. At such time when the parties agree that 1 Gbps service is inadequate for Village's uses, Grantee will upgrade the Village's BIAS in 1 Gbps increments. Grantee will use commercially reasonable efforts, consistent with industry custom and practice, to: (a) manage the VPN so that it provides adequate network security to protect the Village's confidential information; and (b) maintain the VPN so that it is operational not less than 99% of the time measured on a weekly basis.

4.6.3 Public Wi-Fi During Village Events. For each event for which the Village gives e-mail notice to Grantee at least 48 hours in advance, Grantee will operate a free, unsecured Wi-Fi network accessible to the public within the downtown area depicted in **Exhibit C**, attached hereto and incorporated by reference. The Village notice to Grantee will describe the duration and nature of the event and the estimated attendance. The Wi-Fi network will be operated for each event to be capable of facilitating the operation of the event, assisting the Village in raising awareness of the event, and supplementing Internet connectivity in highly populated areas.

4.6.4 5G Neutral Host Services. Grantee will make its Fiber Optic Network available to all telecommunications carriers on commercially reasonable, competitively neutral terms for the purpose of facilitating the deployment of commercial 5G wireless communication network services without unnecessarily disturbing the Village rights-of-way.

4.6.5 Broadway Advantage Area. Grantee shall provide any commercial enterprise located on Broadway Street between Rt.113 and Walnut Street connected to Grantee's network with free, basic Internet service. Basic Internet service will be capable of delivering connectivity of at least 10 Mbps download speed.

SECTION 5: Oversight and Regulation by Village.

5.1. Fees.

5.1.1 Grantee shall not be required to pay any additional fees to the City under this Agreement including for site specific permits for the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act ("TIMFA") (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. The foregoing shall not result in a waiver of any applicable requirement to apply for permits.

5.1.2 In the event Grantee installs facilities that shall not provide "Telecommunications" as defined under the TIMFA, or Grantee no longer maintains its status as a Telecommunications Retailer, Grantee shall so inform the City and the restrictions described in paragraph 5.1.1 shall not apply.

5.1.3 Nothing herein shall affect the Village's authority to license, franchise and tax the business of operating a video service or cable service, as defined under the Cable and Video Competition Law of 2007.

5.2. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Village agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Village that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection, but not copying or removal. In the event that the Village has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Village shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the Village from and against any claims arising from the Village's opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the Village with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the Village, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement or Transfer of Control of Grantee.

6.1. The Grantee may not assign this Agreement without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. During the Term, no transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.3. No consent shall be required, however, for (1) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in this Agreement in order to secure indebtedness, (2) a transfer to an affiliate of Grantee that controls Grantee, is directly or indirectly owned or controlled by Grantee, or is commonly controlled with Grantee; or (3) changes of control to "grandparent" entities which do not result in a change to the identity of the management of the Grantee or the capitalization of Grantee.

6.4. The Grantee, and any proposed assignee for which Village consent is required under this Section 6, shall submit a written application to the Village containing or accompanied by such information as is reasonably required by the Village. Within forty five (45) days after receiving a request for consent, the Village shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee. If the Village has not taken final action on the Grantee's request for consent within forty-five (45) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume all the accrued obligations of the Grantee under this Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the Grantee, whether in a foreclosure, receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control and require the Village's consent thereto in the manner described in Section 6 above.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. Insurance. Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Village certificates of insurance designating the Village and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Village. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Village from any workers compensation claims to which the Grantee may become subject during the term of this Agreement.

7.2. Indemnification. The Grantee shall indemnify, defend, and hold harmless the Village, its officers, employees, and agents (the "Indemnitees") from and against any injuries,

claims, demands, judgments, damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the Village. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The Village shall give the Grantee timely written notice of its obligation to indemnify and defend the Village after the Village's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the Village. If the Village elects in its own discretion to employ additional counsel, the costs for such additional counsel for the Village shall be the responsibility of the Village. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the Village for any liabilities, damages, costs or expense resulting from any conduct for which the Village, its officers, employees and agents are held liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the Village by reference to the limits of insurance coverage described in this Agreement.

7.3. Limitation of Liability. In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the Village shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default (each, a "Grantee Default").

8.2. Right to Cure, Termination. If such Grantee Default is not cured within forty five (45) days after the receipt of such notice (or, if such default cannot be cured within such forty five (45) day period, if the Grantee does not commence and diligently continue actions to cure such default), the Village shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving written notice to take effect within thirty (30) days after such notice unless Grantee shall cure such default within said thirty (30) days.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4 Remedies Not Exclusive. In addition to the remedies set forth in this Section 8, the Grantee acknowledges the Village's ability pursuant to Section 3.1 of this Agreement to enforce the Grantee's compliance with the Village's Right-of-Way Ordinance. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the Village to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Village.

8.5 Abandonment; Removal. In the event: (a) this Agreement is terminated pursuant to paragraph 8.2, or (b) Grantee fails or refuses to operate BIAS within the Franchise Area for all or part of six (6) months out of any seven (7) month period; Grantee shall, upon the Village and Grantee's mutual agreement, either (y) abandon the Grantee's facilities in place and deliver a bill of sale for such facilities to the Village, or (z) assign this Agreement and Grantee's facilities to a successor grantee pursuant to Section 6 hereof for the purpose of operating BIAS in the Franchise Area.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached. The time for performance of any of Grantee's obligations hereunder shall be tolled only during the term of the Force Majeure event, provided Grantee exercises reasonable diligence to avoid the effect of such events.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the Village:

Village of Coal Village
515 S. Broadway Street
Coal City, Illinois 60416
ATTN: Village Administrator

With copy to:

Ancel Glink, P.C.

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: Gene Crusie

With copy to:

Rowland & Moore, LLP

140 S. Dearborn, 6th Floor
Chicago, IL 60603
ATTN: Coal City Attorney

1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This amended Agreement supersedes previous agreements and embodies the entire understanding and agreement of the Village and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.3 and 2.4 of this Agreement, all ordinances or parts of ordinances related to the provision of BIAS that are in conflict with or otherwise impose obligations different from the provisions of this Agreement are superseded by this Agreement.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. In the event any provision hereof is nonetheless found by a final, non-appealable judicial order to be invalid or unenforceable in the manner in which it is applied or implemented by the parties hereto, the parties agree that the change in interpretation and performance of this Agreement shall be solely prospective from the effective date of the order and shall not give rise to any retroactive claims for a party's actions in reliance on this Agreement preceding the date of such order unless such order clearly addresses the retroactive and prospective application of such order. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Grundy County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village and the Grantee, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate ordinance or resolution by the Village, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the Village that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the Village that s/he is authorized to execute this Agreement in the name of the Grantee.

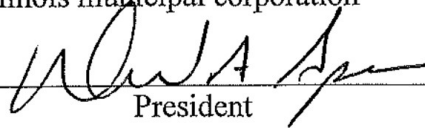
9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

9.13. Termination of Original Agreement. The Parties acknowledge and agree that this Amended Agreement amends and restates the Original Agreement, that the Original Agreement shall be terminated as of the Effective Date, and that the Original Agreement shall have no force or effect after the Effective Date. From and after the Effective Date of this Agreement, the Parties acknowledge that this Agreement is intended to be the sole and exclusive Agreement between the Parties pertaining to the Grantee's provision of BIAS, but by granting this Agreement the Village is not waiving any rights or claims grounded under the Original Agreement.

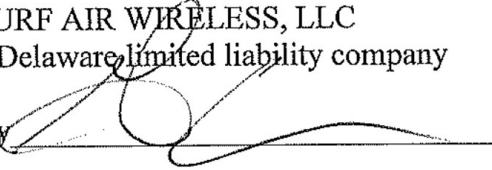
(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

VILLAGE OF COAL VILLAGE,
an Illinois municipal corporation

By 
President

SURF AIR WIRELESS, LLC
a Delaware limited liability company

By 

Name: Gene Crusie

ATTEST:


Village Clerk

Title: CEO

EXHIBIT B

AMENDED AND NOVATED CO-LOCATION AGREEMENT

AMENDED AND NOVATED CO-LOCATION AGREEMENT

This AMENDED AND NOVATED CO-LOCATION AGREEMENT ("Agreement") dated as of the date below, is entered into by the Village of Coal City, an Illinois Municipal Corporation, (the "Village") and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (the "Company"), as successor to Cyber Broadcasting, L.L.C. This Agreement amends a Co-Location Agreement entered into by the parties on May 26, 2010 (the "Original Agreement"), and novates the Original Agreement to substitute the Company for Cyber Broadcasting, L.L.C.

This Agreement involves two water towers. The first "North Water Tower" is located near the southwest corner of the intersection of Broadway Road and McArdle Street, in the Village of Coal City, Grundy County, Illinois (P.I.N.s 06-34-427-006 and 06-34-427-007). The second water tower, "South Water Tower" is located on South Broadway Street, in Coal City, Illinois, approximately 150 feet south of 1495 S. Broadway Road, Coal City, Illinois (P.I.N. 09-10-400-008). For the purpose of this Agreement, the "Premises" shall include the North Water Tower, South Water Tower, and a 10' X 10' ground space designated by the Village at the South Water Tower, as more specifically depicted on Exhibit A, attached hereto and incorporated by reference. The Company desires to use a portion of the Premises in connection with its internet broadcasting business, and to construct a fiber optic network in the Village.

1. **Lease.** The Village hereby grants to the Company a Lease to utilize the Premises, along with ingress/egress thereto, for Company's uses from the nearest right of way along the Premises for the placement and maintenance of the equipment listed in Paragraph 2 (hereinafter "internet broadcasting facilities"). Village grants to Company the exclusive right to broadcast wireless internet service from the Premises during the term of this Agreement and any subsequent terms.

2. **Permitted Use.** Company may use the Premises for the installation of equipment necessary to support a fiber optic network within the Village and to conduct wireless broadcasting as necessary.

- (a) With respect to wireless broadcasting, Company may use the Premises for the following: (i) transmission and reception of internet broadcasting signals; (ii) to construct, install, operate, maintain, repair, replace, protect, and secure its internet broadcasting fixtures and related equipment, cables, accessories, and improvements, described as follows:

Mount unlicensed band radios (up to six (6) at the North Water Tower and twelve at the South Water Tower) and associated ground equipment as needed.
Frequencies to include:

- 902MHz – 928MHz
- 2400MHz – 2483.5MHz
- 5250 MHz – 5350 MHz / 5725MHz – 5850MHz
- Any future licensed or unlicensed wireless bands which may become available during the initial or subsequent term(s) of this Agreement over which Company may lawfully broadcast broadband internet service.

All radios will be powered from an enclosure located on the Premises. Company will provide the necessary enclosures for this purpose, subject to the Village's approval. Each enclosure will require 110V AC power. Company will connect to existing Village-owned power facilities at the towers. The power consumed by Company at each tower will not exceed \$10.00 per month in usage at any time. Should the power consumption exceed the specified \$10.00 per month, Company will reimburse the Village for any overage.

- (b) With respect to supporting Company's fiber optic network, Company shall operate its equipment within the enclosure and subject to the power requirements set forth above.

Village acknowledges and agrees that Company may migrate services within the Village from wireless broadcasting to fiber and thus may modify the equipment installed at the Premises accordingly, provided it otherwise complies with the requirements of this Agreement. In the event Company migrates services to broadband fiber Internet services, the exclusivity described in Section 1 shall become null and void.

Notwithstanding the foregoing, no additional or replacement equipment which increases the cumulative structural load on the water towers may be installed on the towers unless the Company first delivers to Village a report prepared by a professional engineer certifying that the replacement equipment will not cause any deleterious effects on the operation, use and maintenance of the water tower. The Village shall have not less than fifteen (15) business days to review the engineering report and accept or object to the report in whole or in part.

3. **Compliance with All Laws, Rules, and Regulations.** Company agrees to comply with all applicable governmental laws, rules, statutes and regulations relating to its use of the internet broadcasting facilities on the Premises.

4. **Communication Systems Interference.** Company agrees that its internet broadcasting facilities shall in no way interfere with any of the Village's existing communication systems. Should Company's internet broadcasting facilities at any time interfere with any of the Village's existing communication systems, Village shall notify Company of same. Upon such notice, the Company shall discontinue said interference and cure the problem with its internet broadcasting facilities. In the event Company does not discontinue such interference or is unable to cure the problem within a reasonable time frame, this Agreement shall immediately terminate.

5. **Term of Lease.** This Agreement will be in effect for a term of ten (10) years from and after its date of execution, and thereafter will continue for up to four (4) successive periods of five (5) years unless terminated or modified by the parties, in accordance with the provisions of this Agreement. Notice of the intent to terminate this Agreement shall be provided to the other party at least six (6) months prior to the end of any Agreement period.

In the event the Village determines, in its sole discretion, to decommission and remove the water tower, the Village reserves the right to require Company, at Company's expense, to remove

Company's Facilities and relocate Company's Facilities to a new location owned by the Village as mutually agreed to by the Parties. If the Parties cannot agree on a substitute location for Company's Facilities within 90 days after notice to Company of Village's intent to remove the water tower, the Agreement shall terminate as provided herein.

6. **Fee.** As Company's operations in the Village expand, Company will make more intensive use of the Premises and may have to install additional equipment, and thus the Parties acknowledge and agree that it is appropriate for any license fee paid hereunder to reflect the scale of Company's operations. Accordingly, Company shall pay to the Village for the use of the Premises (i) 5% of its gross revenue from customers to which Company provides wireless or fiber-based BIAS Services within the Village, plus (ii) \$250 per month per water tower ((i) and (ii) together, the "License Fee"). "Gross revenue" means the revenue received by Company from the operation of a wireless or fiber optic network in the Village to provide Broadband Internet Access Services ("BIAS"), calculated in accordance with generally accepted accounting principles. Gross Revenue shall also include such other revenue sources from BIAS delivered over the wireless or fiber optic network as may now exist or hereafter be developed by Company. Gross Revenue shall not include any taxes, fees or assessments imposed or assessed by any governmental authority.

- (a) Company shall pay the License Fee within thirty (30) days of the end of each calendar quarter, and provide a revenue report to the Village to confirm the accuracy of the amount paid. The Village acknowledges that any subscriber data included in any revenue report shall be anonymized.
- (b) "BIAS" has the meaning set forth in 47 C.F.R. §8.1 and means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service, and any service that the FCC determines, from time to time, to be functionally equivalent.

7. **Additional Considerations.** In consideration for the Company's use of the Premises, Company will provide the following when requested by the Village:

- (a) Company will provide the necessary equipment to link an Ethernet network at Coal City's Village Hall to the Company's wireless network.
- (b) Company will provide the necessary equipment to link an Ethernet network at the Coal City's Police Department to the Company's wireless network.
- (c) Company will provide the necessary equipment to link an Ethernet network at Coal City's Water Treatment Plant to the Company's wireless network.

- (d) Company will provide the necessary equipment to link an Ethernet network at Coal City's Sewer Lift stations (three locations) to the Company's wireless or fiber network.
- (e) Company will install the necessary equipment as described in 6(a) – (d).
- (f) Company will provide free internet service to the buildings/locations listed on Exhibit B. Network will be capable of providing speeds up to 1 Gbps where fiber service is available to the location, and 10 Mbps where fixed wireless service is available to the premises. Exact performance will vary based on line-of-site, and load-levels on network.

8. **Insurance.** Company shall carry during the term of this Agreement and any successive terms, at its own cost and expense, property insurance for its property's replacement cost. Prior to installation or maintenance of Company's internet broadcasting equipment, Company shall also require its installation or maintenance contractor to provide evidence of liability insurance in the form of an ACORD certificate in the amounts of One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) per person covering work of such contractor on the Village's property and naming the Village and Company as additional insured. Said insurance shall be primary to any insurance held by the Village.

9. **Indemnification.** Company agrees to indemnify, defend and hold the Village harmless from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) resulting from the installation, use, maintenance, repair, or removal of the internet broadcasting facilities or the breach of any provision of this Agreement, except attributable to the negligent or intentional act or omission of the Village, its employees, agents, or independent contractors.

10. **Warranties.** Company and Village each acknowledge and represent that they are duly organized, validly existing and in good standing and have all rights, power and authority to enter into this Agreement and bind themselves hereto through the party set forth as signatory for the party below.

11. **Access.** Village shall provide Company and its employees, agents, and subcontractors with reasonable access to and over the premises for the installation, maintenance and operation of the internet broadcasting facility and any utilities serving the premises.

12. **Removal/Restoration.** All portions of the internet broadcasting facility brought onto the Premises by Company will be and remains Company's personal property and, at Company's option may be removed by Company at any time during the Term. Within thirty (30) days of the termination of this Agreement, Company shall remove all such personal property and will restore the Premises, to the extent reasonable, to the condition at the commencement of the Term. Company shall be responsible, during the removal and restoration of the internet broadcast facility, for any damage to Premises caused by the actions of Company, its agents, engineer, surveyors or other representatives during said removal and restoration.

13. **Prohibition Against Assignment.** Company shall not assign this Lease Agreement or any of the obligations or privileges hereunder, or allow any party other than the Company or Company's agents, contractors and employees to occupy or use the Premises or any part thereof, without first obtaining written consent of the Village.

14. **Maintenance, Improvement Expenses.** All modifications to the Premises and all improvements made for Company's benefit shall be at the Company's expense and such improvements, including antenna, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the Village's facilities on or adjacent to the Premises, and secured by Company. If Company's internet broadcasting facilities are mounted on the Premises, they shall, at all times, be painted, at company's expense, the same color as the Structure.

15. **Damages to Premises.** Any damage done to the Premises, or other Village property, during installation or during operations, shall be repaired at Company's expense within 30 days after notification of damage. The Village shall maintain the option of performing the repairs and billing Company for said repairs which must be paid by Company within 30 days of billing. The internet broadcasting facilities shall remain the exclusive property of the Company, unless otherwise provided in this Agreement. In the event Company's operation of its internet broadcasting facilities causes interference with Village's performance of routine maintenance and repairs on Premises, Company agrees to temporarily suspend operation for the duration of such maintenance and repairs. Prior to commencing any maintenance and repairs, the Village shall give Company no less than five days' notice of the same.

16. **Default and Right to Cure.** Except as otherwise provided herein, the following will be deemed a default by the Company and a breach of this Agreement: Company's failure to perform any term or condition of this Agreement within thirty (30) days after receipt of written notice by the Village specifying the failure. However, no such failure will exist if Company has cured the default within such period. Upon the occurrence of an event of default, the Village may elect to pursue any and all remedies available in law or equity, including but not limited to the termination of this Agreement upon delivery of written notice to the Company.

Should it be deemed necessary to pursue legal action due to the Company's default, the Village shall be entitled to its attorney's fees and costs, should the Village prevail.

17. **Notices.** All notices, requests and demands will be sent by first class mail as follows:

To the Village of Coal City: Village Administrator
 Village of Coal City
 515 S. Broadway Street
 Coal City, IL 60416

With a copy to: Ancel Glink, P.C.
 Attn: Coal City Attorney
 140 S. Dearborn Parkway, Suite 600
 Chicago, IL 60603

To the Company:

Gene Crusie
Surf Air Wireless
P.O. Box 1401
La Porte, IN 46532 46352

With copy to:

Rowland & Moore, LLP
16093 Orrington Ave., Suite 600
Evanston, IL 60201
Attn: Tom Rowland

18. **Taxes.** Company shall pay all personal property taxes assessed on, or any portion of such taxes attributable to the internet broadcasting facility. Company, upon presentation of sufficient and proper documentation, will pay, within thirty (30) days, any increase in real property taxes against the Premises which is directly attributable to Company's use of the Premises, provided that Company will be entitled to appeal any such increase payable by it.

19. **Severability.** If any term or condition of the Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

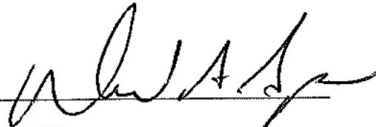
20. **Termination of Original Agreement.** The Parties acknowledge and agree that this Agreement amends and restates the Original Agreement, that the Original Agreement shall be terminated as of the date hereof, and that the Original Agreement shall have no force or effect after the date hereof. From and after the Effective Date of this Agreement, the Parties acknowledge that this Agreement is intended to be the sole and exclusive Agreement between the Parties pertaining to the Grantee's use of the Premises, but by executing this Agreement the Village is not waiving any rights or claims grounded under the Original Agreement.

21. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties.

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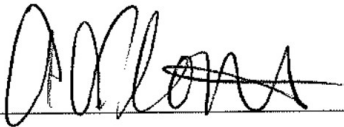
22 IN WITNESS HEREOF, the undersigned has caused this Agreement to be executed this day of May, 2024.

Village of Coal City:



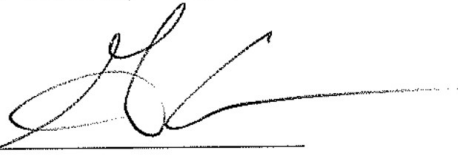
President
Title

Attest



Clerk

Surf Air Wireless, LLC, d/b/a Surf Internet



CEO
Title

EXHIBIT A

DEPICTION OF PREMISES

South Water Tower

Surf Land Lease Location



Source: Grundy County web mapping application. Date: 8-26-2022



EXHIBIT B
SERVICE LOCATIONS

Parks

- North Park N Broadway Rd, 06-34-427-001 through 010
- Hope Helps Park S Illinois St, 09-03-283-001
- Lion's Park, concession stand and, Mustang Field S Illinois St and S Mary St, 09-03-282-001 and 003
- Proposed Park on Richards St in Meadow Estates Subdivision, 09-02-228-008

Village Buildings

- Maintenance Department and Water Plant, 830 N Broadway, 06-35-100-011
- Sewer Plant 820 N Broadway, 06-35-100-012
- Village Hall 515 S Broadway, 09-02-154-014
- Police Department 545 S Broadway, 09-02-154-013
- Building Department 55 W Maple, 09-03-436-001
- Prairie Oaks Water Plant, 06-23-276-007

Fire Department Buildings

- Station #1 35 S DeWitt Pl, 09-03-227-034
- Station #2 1455 S Berta Rd, 09-11-200-010 Fixed Wireless only

Village Water Utility Structures

- North Tower N Broadway, 06-34-427-006 and 007
- South Tower S Broadway, 09-10-400-008
- Well #6 830 N Broadway, 06-35-100-011
- Well #5 Devil's Brae Lane, N Broadway, 06-34-428-002 Road crossing o
- Well #7 75 S DeWitt, 09-03-227-032
- Well #4 S Illinois (by alley near Center St), 09-03-280-008 – Next to Hope Helps Park

Lift Stations

- Prairie Oaks E Carper Rd, 06-23-276-001
- 770 E 4th St, 06-35-404-010
- 195 N 5th Ave, 06-35-479-001
- 695 S Kankakee, 09-02-304-011
- 507 Hunters Run, 09-03-332-006
- E Spring Rd, 09-11-100-014