

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: December 13, 2022

**Action Agenda
Item No.** 8-i

SUBJECT: Approval of a License Agreement between Orange County and North State Communications Advanced Services, LLC of North Carolina

DEPARTMENT: Asset Management Services

ATTACHMENT(S):

1. Site Survey
2. License Agreement

INFORMATION CONTACT:

Travis Myren, Deputy County Manager,
919-245-2308

Steven Arndt, Asset Management
Services Director, 919-245-2658

PURPOSE: To approve a License Agreement between Orange County (Licensor) and North State Communications Advanced Services, LLC of North Carolina (Licensee) to allow the Licensee to install a point-of-presence (“POP”) facility to house equipment necessary to operate Licensee’s fiber network on Orange County-owned property.

BACKGROUND: At the April 26, 2022 Board of County Commissioners’ Business Meeting, the Board approved a network development agreement with North State Communications Advanced Services, LLC to deploy broadband service to unserved locations in Orange County.

North State Communications Advanced Services, LLC is now in the process of planning and installing broadband infrastructure throughout targeted areas of the County. Earlier this year, North State contacted the County regarding the possibility of installing a small point-of-presence (“POP”) facility on County-owned property adjacent to the Orange Public Transportation Administration Building located at 600 Highway 86 North, Hillsborough, NC. The license agreement pertains to a 50’x50’ area of land behind the Transportation Building. A survey showing the property and the proposed site of the POP facility is provided at *Attachment 1*.

Upon the review and recommendation of the County Attorney’s Office, a license agreement has been developed to facilitate this request for the use of County property. A copy of the proposed license agreement is provided at *Attachment 2*.

FINANCIAL IMPACT: There is no financial impact associated with this request.

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goal is applicable to this item:

- **GOAL: ENSURE ECONOMIC SELF SUFFICIENCY**

The creation and preservation of infrastructure, policies, programs and funding necessary for residents to provide shelter, food clothing, and medical care for themselves and their dependents.

Approval of this license agreement will allow North State Communications Advanced Services, LLC to install broadband infrastructure necessary to deploy broadband service to unserved locations in Orange County.

ENVIRONMENTAL IMPACT: There are no Orange County Environmental Responsibility Goal impacts associated with this item.

RECOMMENDATION(S): The Manager recommends that the Board:

- 1) Approve the attached License Agreement between Orange County and North State Communications Advanced Services, LLC of North Carolina; and
- 2) Authorize the County Manager to sign the License Agreement on behalf of the County upon final approval of the County Attorney's Office.



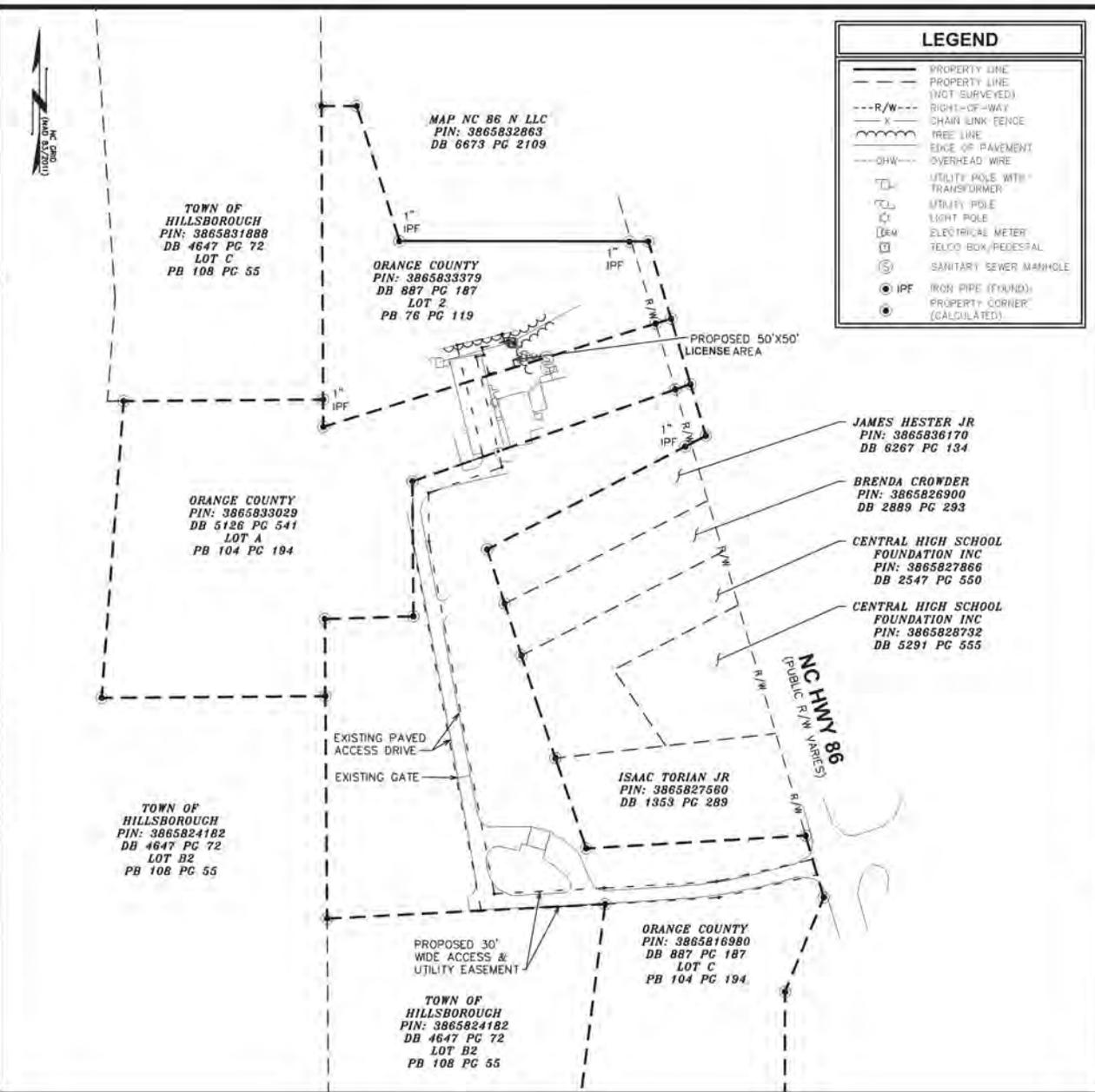
VICINITY MAP n.t.s.

NOTES
 1. BASIS OF THE BEARINGS AND COORDINATES IS THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM (NAD 83/2011) BASED ON DIFFERENTIAL GPS OBSERVATIONS PERFORMED ON OCTOBER 26, 2022. REF. TO THE NATIONAL SPATIAL REFERENCE SYSTEM VIA CORS STATIONS, AND EXPRESSED IN US SURVEY FEET. ALL DISTANCES ARE IN DECIMAL DISTANCES.

2. AREA COMPUTED BY COORDINATE GEOMETRY
3. DEED REFERENCE: DEED BOOK 257, PAGE 187
4. PLAT REFERENCE: PLAT BOOK 76, PAGE 115
5. PIN # 8665281376
6. THIS MAP WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT, WHICH MAY REVEAL ADDITIONAL CONVEYANCES, EASEMENTS, RIGHTS-OF-WAY, ASSIGNMENTS, OR RESTRICTIONS NOT SHOWN AND IS NOT AN ALTA/MSP'S LAND TITLE SURVEY
7. ALL PROPERTY OWNERSHIPS WERE TAKEN FROM CURRENT COUNTY TAX MAP RECORDS AND/OR RECORDED PLATS ONLY
8. BY GRAPHIC DETERMINATION THE SUBJECT PROPERTY LIES IN FLOOD ZONE "X" AREA DETERMINED TO BE OUTSIDE OF CHANNEL OF ANNUAL FLOOD BASED UPON FEMA COMMUNITY PANEL # 3708H0001 EFFECTIVE FEBRUARY 03, 2007.
9. PROPERTY OWNER INFORMATION:
 ORANGE COUNTY
 PO BOX 8151
 HILLSBOROUGH, NC 27275

REV	DATE	ISSUED FOR	INITIALS
0	11/10/2022	PRELIMINARY	DD

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS (G.S. 47-30(n))



TEP ENGINEERING, PLLC
 326 TRYON ROAD
 RALEIGH, NC 27603-3530
 (919) 661-6351
 COA # P-1403

SHEET # 1 OF 3 TEP # 325124

SITE OVERVIEW

"PRELIMINARY PLAT - NOT FOR RECORDATION, CONVEYANCES, OR SALES"

FOR REVIEW PURPOSES ONLY

PROJECT INFORMATION:

ORANGE COUNTY POP

600 NC 86
 HILLSBOROUGH, NC 27278
 HILLSBOROUGH TOWNSHIP
 ORANGE COUNTY

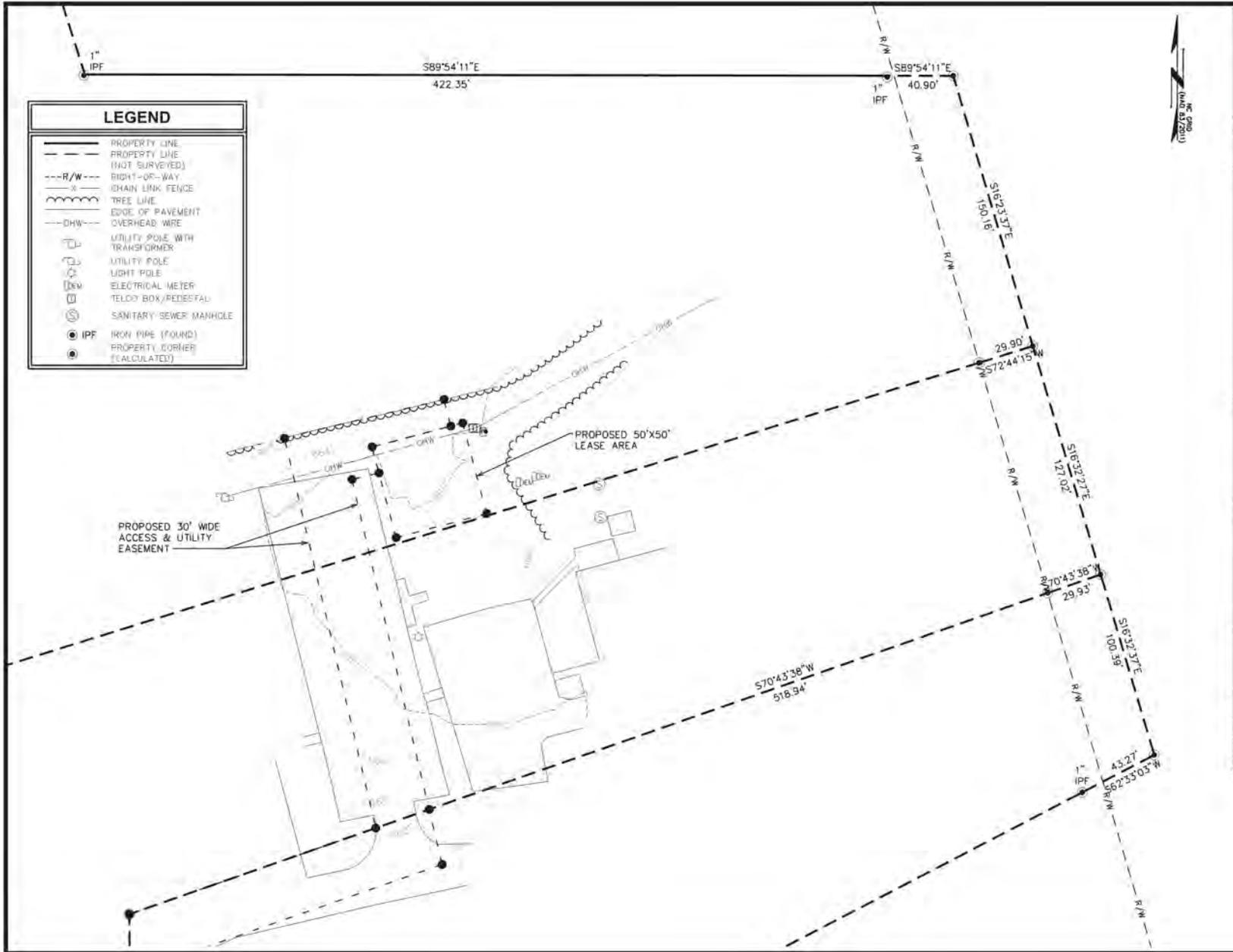
PROPOSED TELECOMMUNICATIONS SURVEY
 PREPARED FOR:

lumos
 (336) 900-0428

FIELD WORK PERFORMED ON: 10/25/22

0' 200' 400'

SCALE: 1" = 200'
 ORIGINAL MAP SIZE 11.00" X 17.00"



LEGEND	
	PROPERTY LINE
	PROPERTY LINE (NOT SURVEYED)
	RIGHT-OF-WAY
	CHAIN LINK FENCE
	TREE LINE
	EDGE OF PAVEMENT
	OVERHEAD WIRE
	UTILITY POLE WITH TRANSFORMER
	UTILITY POLE
	LIGHT POLE
	ELECTRICAL METER
	TELEPHONE BOX/PEDESTAL
	SANITARY SEWER MANHOLE
	IRON PIPE (FOUND)
	PROPERTY CORNER (CALCULATED)

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SHEET # 2 OF 3 TEF # 325124

TOPOGRAPHIC SURVEY

"PRELIMINARY PLAT - NOT FOR RECORDATION, CONVEYANCES, OR SALES"

FOR REVIEW PURPOSES ONLY

PROJECT INFORMATION:
ORANGE COUNTY POP
 600 NC 86
 HILLSBOROUGH, NC 27278
 HILLSBOROUGH TOWNSHIP
 ORANGE COUNTY

PROPOSED TELECOMMUNICATIONS SURVEY
 PREPARED FOR:

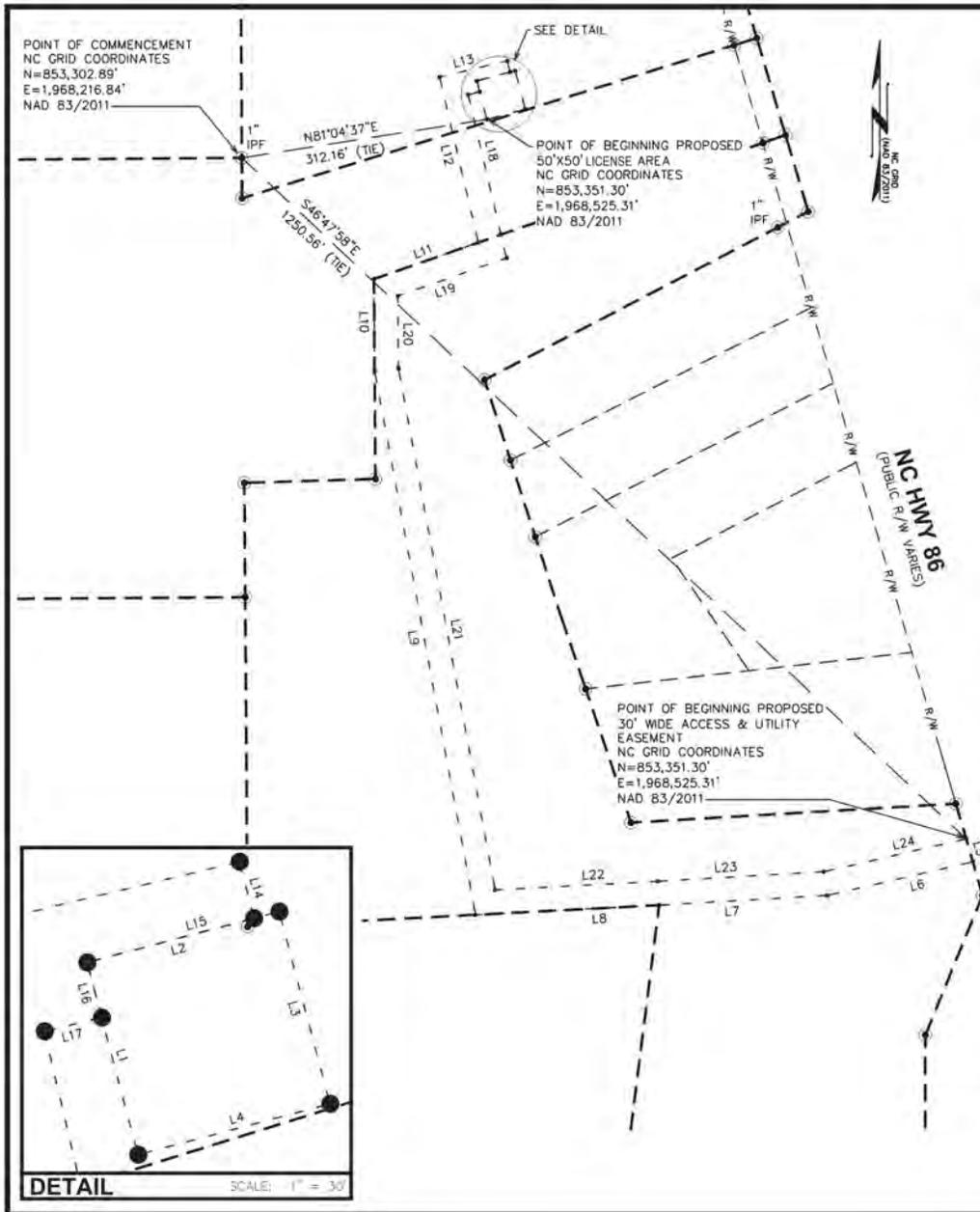
lumos

(336) 900-0428

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REV	DATE	ISSUED FOR	INITIALS
1	11/10/2022	PRELIMINARY	DDS



LEGAL DESCRIPTION OF 50' X 50' LICENSE AREA

ALL THAT CERTAIN LICENSE AREA, SITUATED, LYING AND BEING IN HILLSBOROUGH TOWNSHIP, ORANGE COUNTY, NORTH CAROLINA, BEING A PORTION OF THE LANDS DESCRIBED IN DEED BOOK 887 AT PAGE 187 OF THE ORANGE COUNTY REGISTER OF DEEDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIPE FOUND ON THE WESTERLY LINE OF THE LANDS DESCRIBED IN DEED BOOK 887, PAGE 187, HAVING NORTH CAROLINA STATE PLANE COORDINATES OF NORTHING = 853,302.89', AND EASTING = 1,968,216.84', THENCE, FROM THE POINT OF COMMENCEMENT, NORTH 81°04'37" EAST A DISTANCE OF 312.16 FEET TO A POINT ON THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED 50' X 50' LICENSE AREA, SAID POINT BEING THE TRUE POINT OF BEGINNING, HAVING NORTH CAROLINA STATE PLANE COORDINATES OF NORTHING = 853,351.30', AND EASTING = 1,968,525.31'. THENCE, FROM THE POINT OF BEGINNING, NORTH 14°49'50" WEST A DISTANCE OF 50.00 FEET TO A POINT; THENCE NORTH 75°10'10" EAST A DISTANCE OF 50.00 FEET TO A POINT; THENCE SOUTH 14°49'50" EAST A DISTANCE OF 50.00 FEET TO A POINT; THENCE SOUTH 75°10'10" WEST A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID LICENSE AREA CONTAINING 2,500 SQUARE FEET OR 0.057 ACRES MORE OR LESS

LEGAL DESCRIPTION OF 30' ACCESS & UTILITY EASEMENT

ALL THAT CERTAIN EASEMENT AREA, SITUATED, LYING AND BEING IN HILLSBOROUGH TOWNSHIP, ORANGE COUNTY, NORTH CAROLINA, BEING A PORTION OF THE LANDS DESCRIBED IN DEED BOOK 887 AT PAGE 187 OF THE ORANGE COUNTY REGISTER OF DEEDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIPE FOUND ON THE WESTERLY LINE OF THE LANDS DESCRIBED IN DEED BOOK 887, PAGE 187, HAVING NORTH CAROLINA STATE PLANE COORDINATES OF NORTHING = 853,302.89', AND EASTING = 1,968,216.84', THENCE, FROM THE POINT OF COMMENCEMENT, SOUTH 46°47'58" EAST A DISTANCE OF 1,250.56 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF NC HIGHWAY 86, SAID POINT BEING THE TRUE POINT OF BEGINNING HAVING NORTH CAROLINA STATE PLANE COORDINATES OF NORTHING = 852,448.80', AND EASTING = 1,969,128.54'. THENCE, FROM THE POINT OF BEGINNING AND WITH SAID WESTERLY RIGHT OF WAY, SOUTH 16°17'13" EAST A DISTANCE OF 30.05 FEET TO A POINT; THENCE, LEAVING SAID RIGHT OF WAY, SOUTH 76°59'29" WEST A DISTANCE OF 188.01 FEET TO A POINT; THENCE SOUTH 86°40'30" WEST A DISTANCE OF 212.06 FEET TO A POINT; THENCE SOUTH 87°00'28" WEST A DISTANCE OF 231.48 FEET TO A POINT; THENCE NORTH 10°30'48" WEST A DISTANCE OF 695.87 FEET TO A POINT; THENCE NORTH 00°26'45" WEST A DISTANCE OF 115.06 FEET TO A POINT; THENCE NORTH 70°43'38" EAST A DISTANCE OF 159.23 FEET TO A POINT; THENCE NORTH 13°10'17" WEST A DISTANCE OF 213.70 FEET TO A POINT; THENCE NORTH 76°30'46" EAST A DISTANCE OF 87.44 FEET TO A POINT; THENCE SOUTH 14°52'21" EAST A DISTANCE OF 14.66 FEET TO A POINT; THENCE SOUTH 75°10'10" WEST A DISTANCE OF 43.50 FEET TO A POINT; THENCE SOUTH 14°49'50" EAST A DISTANCE OF 14.33 FEET TO A POINT; THENCE NORTH 78°30'46" WEST A DISTANCE OF 74.81 FEET TO A POINT; THENCE SOUTH 43°10'17" EAST A DISTANCE OF 210.83 FEET TO A POINT; THENCE SOUTH 70°43'38" WEST A DISTANCE OF 194.72 FEET TO A POINT; THENCE SOUTH 00°26'45" EAST A DISTANCE OF 90.95 FEET TO A POINT; THENCE SOUTH 10°30'48" EAST A DISTANCE OF 666.93 FEET TO A POINT; THENCE NORTH 87°00'28" EAST A DISTANCE OF 205.10 FEET TO A POINT; THENCE NORTH 86°40'30" EAST A DISTANCE OF 309.43 FEET TO A POINT; THENCE NORTH 76°59'39" EAST A DISTANCE OF 183.75 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT AREA CONTAINING 54,147.85 SQUARE FEET OR 1.243 ACRES MORE OR LESS.

LINE	BEARING	DISTANCE
L1	N14°49'50"W	50.00'
L2	N75°10'10"E	50.00'
L3	S14°49'50"E	50.00'
L4	S75°10'10"W	50.00'
L5	S16°17'13"E	30.05'
L6	S76°59'39"W	188.01'
L7	S86°40'30"W	212.06'
L8	S87°00'28"W	231.48'
L9	N10°30'48"W	695.87'
L10	N00°26'45"W	115.06'

LINE	BEARING	DISTANCE
L11	N70°43'38"E	139.23'
L12	N13°10'17"W	213.70'
L13	N76°30'46"E	87.44'
L14	S14°52'21"E	14.66'
L15	S75°10'10"W	43.50'
L16	S14°49'50"E	14.33'
L17	S78°30'46"W	74.81'
L18	S13°10'17"E	210.83'
L19	S70°43'38"W	144.72'
L20	S00°26'45"E	90.95'

LINE	BEARING	DISTANCE
L21	S10°30'48"E	666.93'
L22	N87°00'28"E	205.10'
L23	N86°40'30"E	209.43'
L24	N76°59'39"E	183.75'



SHEET # 3 OF 3 TEF # 325124

LEGAL DESCRIPTIONS

"PRELIMINARY PLAT - NOT FOR RECORDATION, CONVEYANCES, OR SALES"

FOR REVIEW PURPOSES ONLY

PROJECT INFORMATION

ORANGE COUNTY POP

600 NC 86
HILLSBOROUGH, NC 27278
HILLSBOROUGH TOWNSHIP
ORANGE COUNTY

PROPOSED TELECOMMUNICATIONS SURVEY PREPARED FOR:



(336) 900-0428

FIELD WORK PERFORMED ON: 10/25/22



SCALE: 1" = 150'
ORIGINAL MAP SIZE: 11.00" X 17.00"

REV	DATE	ISSUED FOR	INITIALS
0.	11/10/2022	PRELIMINARY	DDS

DETAIL SCALE: 1" = 30'

Attachment 2

North Carolina

Orange County

LICENSE AGREEMENT

This EQUIPMENT PLACEMENT AND MAINTENANCE LICENSE AGREEMENT ("License Agreement"), made this the ____ day of _____, 2022, by and between Orange County, a political subdivision of the State of North Carolina, whose address is 200 South Cameron Street, P.O. Box 8181, Hillsborough, NC 27278 (hereinafter "Licensor" or "County"), with, to, and for the benefit of North State Communications Advanced Services, LLC of the State of North Carolina, whose address is One Lumos Plaza, Waynesboro, VA 22980 (hereinafter "Licensee").

WITNESSETH:

For good and valuable consideration, and subject to the terms and conditions hereinafter set forth, the Licensor does hereby license unto the Licensee and Licensee does hereby accept the limited use of and access to Licensor's property identified by PIN 3865833379, 3865833029, 3865816980 (the "Property") as set forth herein.

Licensee desires, and Licensor authorizes Licensee, its agents and contractors, to install a point-of-presence to house equipment necessary to operate Licensee's fiber network ("POP") on the Licensor's Property as shown on Exhibit 1, attached hereto and described as follows:

Exhibit 1 contains a metes and bounds description of the area to be utilized. Areas of ingress and egress to the area shall be under the sole control of the Licensor, and Licensee shall be directed as to those areas which shall be utilized for ingress and egress, which shall not be unreasonably denied.

Upon the 91st day following the termination of this license, any easements shown on attachments shall be deemed terminated and extinguished.

1. Point-of-Presence ("POP")

Licensee and its agents and contractors shall be responsible for maintaining the POP as nearly as possible in its current condition and location except as noted in section (d) below.

In consideration of the foregoing and subject to the terms and conditions described herein, the Licensor does hereby grant unto the Licensee the right and privilege and license over, upon, and through the Property to construct, install, re-construct, maintain, repair, modify, or remove the POP and maintain the POP as nearly as possible in its current condition at the location noted above together with a right and license to go upon the Property whenever the same is reasonably necessary for the purposes of constructing, inspecting, maintaining, and repairing said POP.

IT IS UNDERSTOOD AND AGREED by the parties that:

- a. Said License shall commence on the date first above recorded and will continue until such time as it is terminated pursuant to the terms of this License Agreement.
- b. The execution and delivery of this License Agreement by the Licensor and its acceptance by the Licensee shall not obligate the Licensee to construct or re-construct the POP.
- c. Licensee shall utilize the licensed area for the limited purpose of constructing and maintaining the POP as noted herein. Ownership of the POP shall remain with the licensee.
- d. The Licensor shall in all other respects remain the fee owners of the Property and areas subject to this License Agreement, and may make all lawful uses of the Property not inconsistent with the License.
- e. The Licensor shall not be held responsible for any construction, reconstruction, or maintenance of the POP unless such authority is released to it by the Licensee and Licensor agrees in writing to such release.
- f. The Licensee shall not perform any sub-grade maintenance or modification to the POP without prior written authorization from the Licensor.
- g. In the event the Licensee fails to install the POP within one (1) year of the date of this License Agreement or fails to maintain POP in its condition and location as described in Exhibit 1 and Licensor or its successors, heirs, or assigns notifies the Licensee in writing of such failure and the Licensee does not cure such failure to construct or perform necessary maintenance within thirty (30) days of receipt of written notice, such failure will result in termination of the License Agreement immediately upon the expiration of the thirty (30) day cure period, and Licensor or its successors, heirs, or assigns may take possession of and remove the POP from the Property.
- h. Licensee shall obtain, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, Workers' Compensation Insurance, and any additional insurance as may be required by County's Risk Manager as such insurance requirements are described in the Orange County Risk Transfer Policy and Orange County Minimum Insurance Coverage Requirements (each document is hereby incorporated by reference and may be viewed at:

http://www.orangecountync.gov/departments/purchasing_division/contracts.php

Licensee shall not commence work until evidence of such insurance, with Orange County named as an additional insured for general liability, has been received and reviewed by the County's Risk Manager.

- i. Licensee agrees, without limitation, to defend, indemnify, and hold harmless Licensor from all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorney's fees) arising from bodily injury, including death, to any person or persons or damage to or destruction of any property caused in whole or in part by any negligent or intentional act or omission on the part of the Licensee or its agents or contractors related to the installation, use, operation, or access to the POP.
- j. The license granted herein is for the benefit of the Licensee and shall not be transferred, assigned, or otherwise conveyed by the Licensee; and that Licensor or its successors, heirs, or assigns may re-enter and take possession of the POP in the event the Licensee so transfers, assigns, or conveys the POP.
- k. Licensor, at Licensor's option, may terminate this License Agreement upon six (6) months notice to Licensee. Should Licensor exercise this option Licensor shall endeavor to provide other areas situated as near as possible to the location of the POP as contemplated by this License Agreement for the installation of the Licensee's POP.

This License Agreement may be otherwise terminated by mutual agreement of the Licensee and Licensor.

- l. Licensor covenants with Licensee that Licensor is seized of the premises in fee simple, has the right to convey the rights, privileges, and license which are granted herein, and that title is free and clear of all liens and encumbrances which may affect the said rights, privileges, and license contained herein.
- m. The term of this License Agreement shall be five (5) years. The License Agreement may be renewed upon mutual written agreement of the parties.
- n. Both parties agree this License Agreement shall be governed by the laws of the State of North Carolina and Orange County. Licensee shall at all times remain in compliance with all applicable local, state, and federal laws, rules and regulations including but not limited to all state and federal anti-discrimination laws, policies, rules, and regulations and the Orange County Non-Discrimination Policy and Orange County Living Wage Policy (each policy is incorporated herein by reference and may be viewed at:

http://www.orangecountync.gov/departments/purchasing_division/contracts.php).

Any violation of this requirement is a breach of this License Agreement and Licensor may immediately terminate this Agreement without further obligation on the part of the Licensor. This paragraph is not intended to limit and does not limit the definition of breach to discrimination.

- o. Upon the natural expiration or upon termination of this License Agreement any and all structures and fixtures constructed or installed on the Property shall be removed within 90 days of the expiration or termination and the Property returned to substantially the same condition as existed prior to the entry into this License Agreement. Removal shall not be required if the Licensor and Licensee agree in writing to transfer ownership of such structures and fixtures.

p. By executing this License Agreement Licensee certifies that Licensee has not been identified, and has not utilized the services of any agent or subcontractor identified, on the list created by the State Treasurer pursuant to G.S. 147-86.58. By executing this License Agreement, Licensee certifies that Licensee has not been identified, and has not utilized the services of any agent or subcontractor identified, on the list created by the State Treasurer pursuant to G.S. 147-86.81. By executing this License Agreement Licensee affirms Licensee is and shall remain in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

Any notice required by this License Agreement shall be in writing and delivered by certified or registered mail, return receipt requested to the following:

<p>To the Licensor:</p> <p>Orange County</p> <p>County Manager</p> <p>P.O. Box 8181</p> <p>Hillsborough, NC 27278</p>	<p>To the Licensee:</p> <p>North State Communications Advanced Services</p> <p>Attn: Chief Network Officer</p> <p>One Lumos Plaza</p> <p>Waynesboro, VA 22980</p> <p>With a copy to the attention of General Counsel</p> <p>At the same address.</p>
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IN TESTIMONY WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

LICENSOR

By: _____

LICENSEE

By: _____