

ORDINANCE NO. 1912-19

**AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE ITASCA ZONING
ORDINANCE RELATIVE TO SMALL WIRELESS FACILITIES**

WHEREAS, the Village of Itasca (“Village”) is a municipal corporation duly organized and existing under the laws of the State of Illinois; and

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act (50 ILCS 840/1 *et seq.*), approved by the Governor on April 12, 2018, with an effective date of June 1, 2018, acts to impose certain requirements on municipalities, including the Village, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined small wireless facilities both within public rights-of-way and in other locations within the jurisdiction of the Village; and

WHEREAS, the Board of Trustees of the Village has approved certain amendments to the Village Code relative to the permitting, regulation and deployment of small wireless facilities in conformance with Public Act 100-585; and

WHEREAS, the Village has now proposed certain amendments (the “Proposed Text Amendments”) relative to small wireless facilities to conform the text of the Itasca Zoning Ordinance (“Zoning Ordinance”) to the Act and to the amendments made to the Village Code; and

WHEREAS, the Proposed Text Amendments have been referred to the Village’s Plan Commission (“PC”), and the request has been processed in accordance with the Zoning Ordinance, as amended; and

WHEREAS, on December 19, 2018, the Plan Commission held a public hearing on the Proposed Text Amendments pursuant to notice thereof given in the manner required by law, and, after considering all of the testimony and evidence presented at the public hearing, recommended approval of the Proposed Text Amendments by a vote of five (5) in favor and zero (0) opposed, all as set forth in the Findings and Recommendation of the Plan Commission in this matter (“Findings and Recommendation”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Board of Trustees of the Village have duly considered the Findings and Recommendation of the Plan Commission, and all of the materials, facts and circumstances affecting the Proposed Text Amendments; and

WHEREAS, pursuant to the authority granted under Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1 *et seq.*), the Board of Trustees of the Village

approve the Proposed Text Amendments to the Zoning Ordinance set forth below, and find the adoption of the Proposed Text Amendments to be in the best interests of the Village.

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Itasca, DuPage County, Illinois, as follows:

SECTION 1: Each whereas paragraph set forth above is incorporated by reference into this Section 1.

SECTION 2: The Board of Trustees of the Village of Itasca approve and adopt the Findings and Recommendation of the Plan Commission and incorporate such Findings and Recommendation by reference as if fully set forth herein. A copy of the Plan Commission Findings and Recommendation is attached hereto as Exhibit A and made a part hereof.

SECTION 3: Section 3.02 (Definitions) of the Itasca Zoning Ordinance is amended by revising the existing definitions of Antenna, Antenna Structures and Telecommunications Towers, and by adding new definitions for Small Wireless Facilities and for Wireless Support Structure for Small Wireless Facilities, all to read in their entirety as follows:

ANTENNA Antenna is any structure or device used to receive or radiate electromagnetic waves as defined by the FCC or any successor agency. Small wireless facilities, as defined and regulated by Chapter 57 (Small Wireless Facilities) of the Village Code shall not be included within this definition.

ANTENNA STRUCTURES Antenna structures are those structures which include the radiating and/or receive system, its supporting structures (see Telecommunications Towers), and any appurtenance mounted thereon as defined by the FCC or any successor agency. Antenna structures erected or modified to support small wireless facilities (wireless support structures for small wireless facilities), as defined and regulated by Chapter 57 (Small Wireless Facilities) of the Village Code, shall not be included within this definition.

SMALL WIRELESS FACILITY See definition in Section 57.03 of the Village Code.

WIRELESS SUPPORT STRUCTURE FOR SMALL WIRELESS FACILITIES See definition in Section 57.03 of the Village Code.

TELECOMMUNICATIONS

TOWERS

Telecommunications Towers means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communications purposes, including self-support lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures, and the like. This includes the structure and support thereto. Telecommunications towers erected or modified to support small wireless facilities (wireless support structures for small wireless facilities), as defined and regulated by Chapter 57 (Small Wireless Facilities) of the Village Code, shall not be included within this definition.

SECTION 4: Subsection 2.m. (Special Uses/Public Utility and/or Service Uses) of Section 7.04 (R-1. Single-Family Residence District) of the Itasca Zoning Ordinance is amended to add a new subsection (8), to read in its entirety as follows:

(8) Small wireless facilities and associated wireless support structures for small wireless facilities, when located outside of the right-of-way. Small wireless facilities and associated wireless support structures for small wireless facilities, as defined in Section 57.03 (Definitions), are permitted uses in the right-of-way in all zoning districts within the Village, as required by the Small Wireless Facility Deployment Act (P.A. 100-585), so long as the requirements of chapter 57 of the Village Code and other applicable codes, regulations and design standards are met.

SECTION 5: Subsection 2.f. (Special Uses/Public Utility and/or Service Uses) of Section 8.03 (B-1 Local Business District) of the Itasca Zoning Ordinance is amended to add a new subsection (6), to read in its entirety as follows:

(6) Small wireless facilities and associated wireless support structures for small wireless facilities, when located outside of the right-of-way. Small wireless facilities and associated wireless support structures for small wireless facilities, as defined in Section 57.03 (Definitions), are permitted uses in the right-of-way in all zoning districts within the Village, as required by the Small Wireless Facility Deployment Act (P.A. 100-585), so long as the requirements of chapter 57 of the Village Code and other applicable codes, regulations and design standards are met.

SECTION 6: Section 9.02 (O-R Office Research District/Permitted Uses) of the Itasca Zoning Ordinance is amended by adding a new subsection 5. (Public Utility and/or Service Uses), to read in its entirety as follows:

5. Public utility and/or service uses

a. Small wireless facilities and associated wireless support structures for small wireless facilities, when located either outside of the right-of-way or within the right-of-

way, so long as the requirements of chapter 57 of the Village Code and other applicable codes, regulations and design standards are met.

SECTION 7: Section 10.04 (Regional Office Center District/Permitted Secondary Uses) of the Itasca Zoning Ordinance is amended by adding a new subsection 9, to read in its entirety as follows:

9. Small wireless facilities and associated wireless support structures for small wireless facilities, when located either outside of the right-of-way or within the right-of-way, so long as the requirements of chapter 57 of the Village Code and other applicable codes, regulations and design standards are met.

SECTION 8: Subsection 1.q. (Permitted Uses/Public Utility and/or Service Uses) of Section 11.03 (M – Limited Manufacturing District Uses) of the Itasca Zoning Ordinance is amended by adding a new subsection (8), to read in its entirety as follows:

(8) Small wireless facilities and associated wireless support structures for small wireless facilities, when located either outside of the right-of-way or within the right-of-way, so long as the requirements of chapter 57 of the Village Code and other applicable codes, regulations and design standards are met.

SECTION 9: Section 15.01 (Applicability) of Section 15 of the Itasca Zoning Ordinance (Telecommunications Towers and Antennas) of the Itasca Zoning Ordinance is amended by adding a new subsection 5., to read in its entirety as follows:

5. Small Wireless Facilities:

The regulations of this Section 15 do not apply to small wireless facilities or wireless support structures for small wireless facilities. Small wireless facilities or wireless support structures for small wireless facilities are separately regulated by chapter 57 (Small Wireless Facilities) of the Village Code.

SECTION 10: All ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 11: Except as to the Zoning Ordinance amendments set forth above in this Ordinance, all Chapters and Sections of the Zoning Ordinance and Village Code, as amended, shall remain in full force and effect.

SECTION 12: Each section, paragraph, clause and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, nor any part thereof, other than that part affected by such decision.

SECTION 13: This Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this ____ day of April, 2019.

APPROVED:

Village President, Jeffery J. Pruyn

ATTEST:

Village Clerk, Jody Conidi

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

CLERK'S CERTIFICATE

I, Jody Conidi, Clerk of the Village of Itasca, in the County of DuPage and State of Illinois, do hereby certify that the attached and foregoing is a true and correct copy of that certain Ordinance now on file in my Office, entitled:

ORDINANCE NO. 1912-19

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE ITASCA ZONING ORDINANCE RELATIVE TO SMALL WIRELESS FACILITIES

which Ordinance was passed by the Board of Trustees of the Village of Itasca at a Regular Village Board Meeting on the ____day of April, 2019, at which meeting a quorum was present, and approved by the Village President of the Village of Itasca on the _____ day of April, 2019.

I further certify that the vote on the question of the passage of said Ordinance by the Board of Trustees of the Village of Itasca was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Itasca, and that the result of said vote was as follows, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

I do further certify that the original Ordinance, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Itasca, this _____day of April, 2019.

Village Clerk

ORDINANCE NO. 1911-19

**AN ORDINANCE AMENDING TITLE V (PUBLIC WORKS) OF THE CODE OF
ITASCA TO ADD A NEW CHAPTER 57 (SMALL WIRELESS FACILITIES)
RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF SMALL
WIRELESS FACILITIES**

WHEREAS, the Village of Itasca (“Village”) is a municipal corporation duly organized and existing under the laws of the State of Illinois; and

WHEREAS, the public rights-of-way within Village limits are used to provide essential public services to Village residents and businesses. The public rights-of-way within the Village are a limited public resource held 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, growing demand for personal wireless telecommunications services has resulted in increasing requests nationwide and locally from the wireless industry to place small cell antenna facilities, distributed antenna systems, and other small wireless telecommunication facilities on utility and street light poles and other structures both within the public rights-of-way and in other locations; and

WHEREAS, the Village is authorized under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and Illinois law to adopt ordinances pertaining to the public health, safety and welfare; and

WHEREAS, the Village is further authorized to adopt the amendments contained herein pursuant to its authority to regulate the public right-of-way under Article 11, Division 80 of the Illinois Municipal Code (65 ILCS 5/11-80-1 *et seq.*); and

WHEREAS, the Village is authorized, under existing State and federal law, to enact appropriate regulations and restrictions relative to small cell antenna facilities, distributed antenna systems, and other small personal wireless telecommunication facility installations both within the public rights-of-way and in other locations within the jurisdiction of the Village; and

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act (50 ILCS 840/1 *et seq.*), approved by the Governor on April 12, 2018, with an effective date of June 1, 2018, acts to impose certain additional requirements on municipalities, including the Village, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined small wireless facilities both within public rights-of-way and in other locations within the jurisdiction of the Village; and

WHEREAS, in conformance with the requirements of the Small Wireless Facilities Deployment Act, and in anticipation of a continued increased demand for

placement of small wireless facilities of the type regulated by the Small Wireless Facilities Deployment Act both within the public rights-of-way and in other locations within the jurisdiction of the Village, the Village Mayor and Board of Trustees finds that it is in the best interests of the public health, safety and general welfare of the Village to adopt the code amendments below in order to establish generally applicable standards consistent with the Small Wireless Facilities Deployment Act (Public Act 100-585/50 ILCS 840/1 *et seq.*) for the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of such small wireless facilities both within the public rights-of-way and in certain other locations within the jurisdiction of the Village so as to, among other things: (i) prevent interference with the facilities and operations of the Village utilities and of other utilities lawfully located in public rights-of-way or in other locations within the Village; (ii) preserve the character of the neighborhoods in which such small wireless facilities are installed; (iii) minimize any adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which such facilities are installed; (iv) ensure the continued safe use and enjoyment of private properties adjacent to small wireless facilities; (v) provide appropriate aesthetic protections to designated areas and historic landmarks or districts within the Village; and (vi) ensure that the placement of small wireless facilities does not negatively impact public safety and the Village's public safety technology.

BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF ITASCA, DUPAGE COUNTY, ILLINOIS:

SECTION 1: The recitals above shall be and are incorporated in this Section 1 as if fully restated herein.

SECTION 2: Title V (Public Works) of the Code of Itasca is amended by adding a new Chapter 57 (Small Wireless Facilities), to read in its entirety as follows:

CHAPTER 57: SMALL WIRELESS FACILITIES

- 57.1 PURPOSE**
- 57.2 INTERACTION WITH OTHER CODE PROVISIONS AND LAWS**
- 57.3 DEFINITIONS**
- 57.4 ZONING**
- 57.5 PERMITS; APPLICATION PROCESS**
- 57.6 CONSTRUCTION**
- 57.7 PERMIT DURATION**
- 57.8 HEIGHT LIMITATIONS**
- 57.9 GENERAL REQUIREMENTS**
- 57.10 STEALTH, CONCEALMENT AND DESIGN STANDARDS**
- 57.11 RESERVATION OF VILLAGE UTILITY POLE SPACE**
- 57.12 APPLICABILITY OF EXISTING AGREEMENTS**
- 57.13 COLLOCATION ON VILLAGE OWNED INFRASTRUCTURE**
- 57.14 NOTICE OF SALE OR TRANSFER**
- 57.15 ABANDONMENT**

57.16 DISPUTE RESOLUTION

57.17 INDEMNIFICATION

57.18 INSURANCE

57.19 MAINTENANCE OF SMALL WIRELESS FACILITIES

57.20 REVOCATION OF PERMIT

57.21 EXCEPTIONS TO APPLICABILITY

§ 57.01 **PURPOSE.** Consistent with the requirements of the Small Wireless Facilities Deployment Act (Public Act 100-585/50 ILCS 840/1 *et seq.*), and in anticipation of a continued increased demand for placement of small wireless facilities of the type regulated by the Act both within the public rights-of-way and in other locations within the jurisdiction of the Village, the Village Board has found it to be in the best interests of the public health, safety and general welfare of the Village to adopt the code amendments set forth in this chapter in order to establish generally applicable standards for the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of such small wireless facilities both within the public rights-of-way and in other locations within the jurisdiction of the Village so as to, among other things:

- A. Prevent interference with the facilities and operations of the Village's utilities and of other utilities lawfully located both within public rights-of-way and in other locations within the jurisdiction of the Village;
- B. Preserve the character of the neighborhoods in which such small wireless facilities are installed;
- C. Minimize any adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which such facilities are installed;
- D. Ensure the continued safe use and enjoyment of private properties adjacent to small wireless facilities;
- E. Provide appropriate aesthetic protections to any designated historic landmarks or districts within the Village; and
- F. Ensure that the placement of small wireless facilities does not negatively impact public safety and the Village's public safety technology.

§ 57.02 INTERACTION WITH OTHER CODE PROVISIONS AND LAWS.

- A. **Other Code Provisions.** The provisions of this chapter are intended to supplement general requirements and standards relative to the siting of telecommunication facilities and generally applicable requirements for construction within public rights-of-way set forth elsewhere within this code, including but not limited to the regulations set forth in chapter 56 (Construction of Facilities on the Public Rights-

of-way). In the event of a conflict, however, the provisions of this chapter shall control in all matters involving small wireless facilities, as defined below.

B. State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this chapter, a wireless provider shall comply with the requirements of this chapter to the maximum extent possible without violating such federal or State laws or regulations.

§ 57.03 DEFINITIONS

As used in this chapter, the following terms shall have the following meanings:

"Act" means the Small Wireless Facilities Deployment Act (Public Act 100-585/50 ILCS 840/1 *et seq.*).

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

"Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

"Applicant" means any person who submits an application and is a wireless provider.

"Application" means a request submitted by an applicant to the Village for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

"Authority" means the Village or other unit of local government that has jurisdiction and control for use of public rights-of-way as provided by the Illinois Highway Code for placements within public rights-of-way or has zoning or land use control for placements not within public rights-of-way.

"Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole, whether existing or new.

"Communications service" means cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service.

"Communications service provider" means a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24),

as amended; a telecommunications carrier, as defined in 47 U.S.C.153(51), as amended; or a wireless provider.

"FCC" means the Federal Communications Commission of the United States. "Fee"

means a one-time charge.

"Historic district" or "historic landmark" means a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the Village pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

"Law" means a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

"Micro wireless facility" means a small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.

"Permit" means a written authorization required by the Village or other permitting authority to perform an action or initiate, continue, or complete a project.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

"Public safety agency" means the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

"Public Utility" shall have the same meaning as set forth in Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105.

"Rate" means a recurring charge.

"Right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. "Right-of-way" does not include authority-owned aerial lines.

"Small wireless facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty-five (25) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"Structural Engineer" means a person licensed under the laws of the State of Illinois to practice structural engineering.

"Utility pole" means a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

"Village" means the Village of Itasca.

"Village utility pole" means a utility pole owned or operated by the Village in public rights-of-way.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. "Wireless facility" includes small wireless facilities. "Wireless facility" does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

"Wireless infrastructure provider" means any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the Village.

"Wireless provider" means a wireless infrastructure provider and/or a wireless services provider. This does not include, and expressly excludes, any person who is providing service to or for a private niche market.

"Wireless services" means any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

"Wireless services provider" means a person who provides wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include a utility pole.

§ 57.04 ZONING. Small wireless facilities shall be classified as permitted uses and shall not be subject to zoning review, if collocated in rights-of-way in any zoning district, or outside rights-of-way in the following zoning districts:

O-R Office Research Zoning District;

ROC – Regional Office Center Zoning District; and M

Manufacturing Zoning District.

In all other zoning districts, the Village's normal zoning approvals, processes and restrictions shall apply, if zoning approval, processes or restrictions are required by the Village's zoning ordinance.

§ 57.05 PERMITS; APPLICATION PROCESS. Unless otherwise specifically exempted in this chapter, a permit to collocate a small wireless facility within the Village is required in all cases. Permits are subject to the following:

A. Permit Applications: Permit applications for the collocation of small wireless facilities shall be made on a form provided by the Village for such purpose. In addition to any generally applicable information required of other communications service providers or for other installations in the public right-of-way, applicants must, when requesting to collocate small wireless facilities on a utility pole or wireless support structure, provide the following information:

1. Site specific structural integrity and, for a Village utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;

2. The location where each proposed small wireless facility or utility pole would be installed and digital photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. The photographs shall include a digital photo simulation of the proposed location providing “before and after” views demonstrating the true visual impact of the proposed small wireless facilities on the surrounding environment;

3. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;

4. The equipment type and model numbers for the antennas and all other equipment associated with the small wireless facility;

5. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;

6. Certification that, to the best of the applicant’s knowledge, the collocation complies with the written design standards established by the Village, and with the various other requirements set forth in this chapter and code;

7. Copies of all licenses, permits and approvals required by or from the Village (i.e. zoning approval, where required), other agencies and units of government with jurisdiction over the design, construction, location and operation of said small wireless facility. The applicant shall maintain such licenses, permits and approvals in full force and effect and provide evidence of renewal or extension thereof when granted; and

8. In the event the small wireless facility is proposed to be attached to an existing utility pole or wireless support structure owned by an entity other than the Village, legally competent evidence of the consent of the owner of such pole or wireless support structure to the proposed collocation.

B. Means of Submission: Permit applications, along with all supporting information, for the collocation of small wireless facilities shall be submitted by personal delivery or by other means approved by the Village.

C. Multiple Applications for Same Location: Multiple applications for collocation on the same utility pole or wireless support structure shall be processed based on a first fully complete application, first-served basis.

D. Permit Application Fees: All applications for collocation of small wireless facilities shall be accompanied by a nonrefundable application fee in the following amounts:

Request to collocate a small wireless facility that includes the installation of a new utility pole	\$1,000.00
Request to collocate a single small wireless facility on an existing utility pole or wireless support structure	\$650.00
Request to collocate multiple small wireless facilities on existing utility poles or wireless support structures addressed in a single application	\$350.00 per small wireless facility

E. Permit review timelines:

1. Completeness of Application: Requests for the collocation of small wireless facilities shall be reviewed for conformance with the requirements of the Act, this chapter, and other applicable provisions of this code. Within thirty (30) days after receiving an application, the Village must determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. Processing deadlines are tolled from the time the Village sends a notice of incompleteness to the time the applicant provides the missing information.

An application shall be deemed complete if the Village fails to provide notification to the applicant within thirty (30) days of the date when all documents, information, and fees specifically enumerated in the Village's permit application form are submitted by the applicant to the Village.

2. Existing Pole or Wireless Support Structure: Requests for the collocation of small wireless facilities on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and either approved or denied within ninety (90) days of submission of a completed application. A permit application shall be deemed approved if the Village fails to approve or deny the application within ninety (90) days, subject to the following: if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than seventy-five (75) days after the submission of a completed application. The permit shall be deemed approved on the later of the ninetieth (90th) day after submission of the completed application, or the tenth (10th) day after receipt of the deemed approved notice by the

Village. Receipt of a deemed approved notice by the Village shall not preclude the Village from denying the permit within the allowed time limit.

3. New Utility Pole: Requests for the collocation of small wireless facilities that include the installation of a new utility pole shall be processed on a nondiscriminatory basis and either approved or denied within one hundred and twenty (120) days of submission of a completed application. A permit application shall be deemed approved if the Village fails to approve or deny the application within one hundred twenty (120) days, subject to the following: if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than one hundred five (105) days after the submission of a completed application. The permit shall be deemed approved on the later of the one hundred twentieth (120th) day after submission of the completed application, or the tenth (10th) day after receipt of the deemed approved notice by the Village. Receipt of a deemed approved notice by the Village shall not preclude the Village from denying the permit within the allowed time limit.

F. Tolling: The time limitations for approval or denial of applications shall be tolled by notice to an applicant that its application is incomplete as set forth above, upon mutual agreement of the parties, or by a local, State or federal disaster declaration or similar emergency that causes a delay.

G. Pole Replacement: Permit approval shall be conditioned on the replacement of a utility pole or wireless support structure at the applicant's sole cost where such replacement is deemed necessary for compliance with the requirements of this chapter or code relative to the siting of small wireless facilities, or other applicable codes and regulations that concern public safety.

H. Denial: The Village shall deny an application that does not meet the requirements of this chapter. The reasons for any denial of a permit shall be provided in a written notice of denial sent to the applicant, and shall include the specific code provisions or application conditions on which the denial is based.

I. Resubmittal After Denial: In the case of a permit denial, an applicant may cure the deficiencies identified in the notice of denial and resubmit a revised application once within thirty (30) days after the notice of denial is sent without payment of an additional application fee. The Village shall have thirty (30) days to approve or deny the resubmitted application or it is deemed approved, if the applicant has notified the Village of its intention to proceed with the permitted activity on a deemed approved basis, which notification may be submitted with the resubmitted application. Review of a resubmitted application is limited to the deficiencies cited in the original notice of denial. This subsection does not apply if a revised application is not

resubmitted within thirty (30) days, or curing any deficiencies in the original application requires review of a new location, new or different structure for collocation, new antennas, or other wireless equipment associated with the small wireless facility. In such cases, a new application and application fee are required.

J. Consolidated Applications: Consolidated applications for small wireless facilities for the collocation of up to twenty-five (25) small wireless facilities shall be allowed if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. Each consolidated application shall provide all the information required by this chapter for each small wireless facility at each location. If such an application includes incomplete information for one or more small wireless facility collocations, or includes requests for small wireless facilities that do not qualify for consolidated treatment, or that are otherwise denied, the Village may remove such collocation requests from the application and treat them as separate requests. Separate permits may be issued for each collocation approved in a consolidated application.

K. Alternate Locations: If an applicant is seeking to install a new utility pole as part of its application, the Village may propose that the small wireless facility be located on an existing utility pole or existing wireless support structure within one hundred (100) feet of the proposed collocation. The applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits or additional material costs as determined by the applicant. If the applicant refuses an alternate location based on the foregoing, the applicant shall provide legally competent evidence in the form of a written certification, under oath, describing the property rights, technical limits or material cost reasons that prevent the alternate location from being utilized.

L. Exemptions: No application, permit approval or fee shall be required from a communications service provider authorized to occupy the right-of-way when the work in question is for:

1. Routine maintenance not requiring replacement of wireless facilities if the wireless provider notifies the Village in writing at least forty-eight hours prior to the planned maintenance;

2. The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village in writing at least ten (10) days prior to the planned replacement and includes equipment specifications, including (i) equipment type and model numbers, for the replacement of equipment consistent with the equipment specifications information required on a permit application for original installation; and (ii) information sufficient to

establish that the replacement is substantially similar. The wireless provider shall provide all information necessary and requested by the Village to establish that the replacement is substantially similar. The Village has the sole right and responsibility to determine if a proposed small wireless facility is substantially similar to the existing small wireless facility; or

3. The installation, placement, maintenance, operation or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.

The foregoing shall not exempt communications service providers from Village permitting requirements where traffic patterns are affected or lane closures are required.

§ 57.06 CONSTRUCTION. Collocations for which permits are approved shall be completed within one hundred eighty (180) days of issuance of the permit, unless the Village agrees to extend the period or a delay is caused by make-ready work for a Village utility pole or by the lack of commercial power or backhaul availability at the site, provided the applicant has made a timely request within sixty (60) days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty (360) days after issuance of the permit. Permits that are not completed within applicable timelines shall be void absent an extension granted in writing by the Village.

§ 57.07 PERMIT DURATION. Permits issued for small wireless facilities pursuant to this chapter shall be for a period of five (5) years. Permits are subject to renewal at the end of the five (5) year permit period for a successive five (5) year term so long as the installation complies with the applicable code provisions in force at the time of renewal. A finding by the Village at the time of a request for renewal that an installation does not comply with the applicable code provisions in force at the time of the renewal request shall be in writing. If the Act is repealed or found unconstitutional by a court of competent jurisdiction, all permits granted by the Village under this chapter shall terminate at the end of their current term.

§ 57.08 HEIGHT LIMITATIONS.

A. Antenna Installations: The maximum permitted height of a small wireless facility is ten (10) feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

B. New Poles: The maximum permitted height of new or replacement utility pole or wireless support structure, inclusive of any antenna attachment, on which a small wireless facility is collocated is the higher of:

1. Ten (10) feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted, and that is located within three hundred (300) feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the Village. The Village may designate which intersecting right-of-way within three hundred (300) feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or

2. Forty-five (45) feet above ground level.

C. Variance Process: A Wireless provider may receive a variance from the Community Development Director or his or her designee pursuant to the procedures set forth in section 56.22 (Variances) of chapter 56 (Construction of Facilities on the Public Rights-of- Way) of this code, from the maximum permitted height of a new pole set forth in this section, if the wireless provider, in addition to demonstrating the conditions set forth in section 56.22 have been established, can establish that:

1. Because of a particular unusual condition, a particular hardship or practical difficulty to the wireless provider would result, as distinguished from a mere inconvenience, and such hardship or difficulty has not been created by the wireless provider; and

2. Existing utility poles or wireless support structures, or a new utility pole at the maximum permitted height for a new pole allowed by this section cannot accommodate the wireless facility at a height necessary to function effectively, under reasonable terms and conditions; and

3. The use of existing utility poles or other wireless support structures, or a new utility pole at the maximum permitted height for a new pole allowed by this section, is not technically feasible.

§ 57.09 GENERAL REQUIREMENTS.

A. Public Safety Technology: A wireless provider's operation of a small wireless facility may not interfere with the frequencies used by a public safety agency for public safety communications. A wireless provider must install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment. Unacceptable interference is determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licenses by a public safety agency. If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The Village may terminate a permit for a

small wireless facility based on such interference if the wireless provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC, including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675. The burden to establish the good faith effort shall be on the wireless provider, which shall timely deliver to the Village all information necessary to demonstrate its efforts to resolve the interference consistent with the Code of Federal Regulations sections cited above. Failure to remedy the interference as required herein shall constitute a public nuisance and the small wireless facility may be abated through the procedures for abatement of such nuisances set forth in this code.

B. A wireless provider shall not construct or maintain any small wireless facility that:

1. Obstructs, impedes or hinders the usual travel or public safety on a right-of-way;
2. Obstructs the legal use of right-of-way by utility users;
3. Violates nondiscriminatory applicable codes;
4. Violates or conflicts with chapter 56 (Construction of Facilities on the Public Rights-of-way) of this code or section 15 (Telecommunications Towers and Antennas) of the Itasca Zoning Ordinance, or other applicable regulations set forth in this code or otherwise adopted by the Village, except to the extent such chapters, sections or regulations may be modified by the provisions of this chapter; or
5. Violates the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*)

C. Contractual Requirements: Wireless providers shall comply with all requirements imposed by a contract between the Village and any private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

D. Ground-Mounted Equipment: Wireless providers shall comply with the ground mounted equipment spacing requirements within rights-of-way as set forth in chapter 56 (Construction of Facilities on the Public Rights-of-way) of this code, including subsection 56.16(I).

E. Undergrounding:

1. The wireless provider shall comply with Village code provisions or regulations concerning undergrounding requirements, if any, that prohibit the installation of new or the modification of existing utility poles or equipment in the right-of-way.

2. A Wireless Provider may apply for and receive a variance from the Community Development Director or his or her designee pursuant to the procedures set forth in section 56.22 (Variances) of chapter 56 (Construction of Facilities on the Public Rights-of-Way) of this code, to allow a small wireless facility to be located above ground in an area where Village ordinances or regulations prohibit or restrict above ground facilities if, in addition to demonstrating the conditions of section 56.22 have been established, the wireless provider can establish that:

a. Underground equipment is not technically feasible and there is no reasonable alternative or location that is more aesthetically favorable to adjacent property owners and to effective use and management of the right-of-way; and

b. An above ground small wireless facility at the proposed location is necessary at the proposed location to provide coverage in a specified area; and

c. An above ground small wireless facility at the proposed location will not disrupt traffic or pedestrian circulation or constitute a safety hazard; and

d. An above ground small wireless facility at the proposed location will not interfere with public safety uses or frequencies; and

e. Space exists within the public right-of-way to accommodate the above ground small wireless facility at the proposed location; and

f. The above ground small wireless facility is located and designed in such a way so as to minimize its visual impact on adjacent properties; and

g. In any historical area, that the above ground small wireless facility will not detrimentally affect the historical nature of the area.

3. Screening for Ground Mounted Facilities. Where a ground-mounted facility is allowed, such equipment shall be screened around the perimeter in accordance with a landscape plan sealed by a professional landscape engineer. Plant materials shall include a mixture of deciduous and coniferous planting materials. The owner or wireless provider shall be responsible for maintenance of all landscaping as provided in the approved landscape plan.

4. Future Undergrounding: The Village may, from time to time, make a decision to eliminate above-ground utility poles of a particular type generally, such as electric utility poles, in all or a significant portion of the Village. In the event that such a utility pole has a collocated small wireless facility in place at the time of such a decision, the Village shall either:

a. Continue to maintain the utility pole, or install and maintain a reasonable utility pole or wireless support structure for the collocation of the small wireless facility; or

b. Offer to sell the utility pole to the wireless provider at a reasonable cost, or allow the wireless provider to install its own utility pole so it can maintain service from that location.

F. Collocation Limits: Wireless providers shall not collocate small wireless facilities on Village utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the Village utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subsection, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

G. Code Compliance: Wireless providers shall comply with applicable codes and local code provisions or regulations that concern public safety.

§ 57.10 STEALTH, CONCEALMENT AND DESIGN STANDARDS. Every small wireless facility installation shall comply with the following standards:

A. General Stealth, Concealment and Design Standards: Installations shall comply with any stealth, concealment, design and aesthetic standards applicable to utility installations in the public right-of-way, as set forth in chapter 56 (Construction of Facilities on the Public Rights-of-way) of this code, as well as any written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, design and aesthetic requirements that are otherwise identified by the Village in an ordinance, written policy adopted by the Village Board of Trustees, in the Village's comprehensive plan, or in a written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.

B. Historic Districts and Landmarks: For areas designated as historic districts, or on buildings or structures designated as historic landmarks pursuant to chapter 154 (Historic Preservation) of this code, in addition to the stealth, concealment and design requirements referenced above, the following additional restrictions/conditions apply to the installation of small wireless facilities:

1. Small wireless facilities and wireless support structures shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with any buildings or structures designated as historic landmarks or located within a designated historic district, and shall be designed to blend with the surrounding historical landmarks and/or district in design and color.

2. No ground-mounted equipment enclosures shall be permitted within a designated historic district except as approved by the Village as stealth installations.

3. Small wireless facilities shall not be mounted upon Village-owned ornamental street lights except in cases where the equipment enclosure is concealed within the base of the ornamental street light, and the antenna and its related shroud is incorporated in a seamless enclosure on the top of the ornamental street light, pursuant to applicable Village design standards and as approved by the Community Development Director or his or her designee.

C. Historic District or Landmark Limitations:

1. Any stealth, concealment and design standards in a historic district or on a historic landmark, including restrictions on a specific category of utility poles, may not have the effect of prohibiting any provider's technology. Such stealth, concealment and design measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility.

2. This section shall not be construed to limit the Village's enforcement of historic preservation in conformance with the requirements adopted pursuant to the Illinois State Agency Historic Resources Preservation Act or the National Historic Preservation Act of 1966, 54 U.S.C. Section 300101 *et seq.*, and the regulations adopted to implement those laws.

§ 57.11 RESERVATION OF VILLAGE UTILITY POLE SPACE. The Village may reserve space on Village-owned utility poles for future public safety uses or for Village electric utility uses. Such reservation may preclude collocation of small wireless facilities if the Village reasonably determines that the Village's utility pole cannot accommodate both uses.

§ 57.12 APPLICABILITY OF EXISTING AGREEMENTS.

A. Existing Installations: Subject to any applicable termination provisions, where an existing agreement is in place between the Village and a wireless provider relating to the collocation of small wireless facilities on Village utility poles on June 1, 2018, such agreement shall remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted prior to June 1, 2018.

B. Applications Received Between June 1, 2018 and June 1, 2020: Subject to any applicable termination provisions, where an existing agreement is in place between the Village and a wireless provider relating to the collocation of small wireless facilities on Village utility poles on June 1, 2018, such agreement shall remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted after June 1, 2018, but prior to June 1, 2020, until June 1, 2020 or receipt by the Village from the wireless provider of a notice that it is opting to accept the rates, fees and terms of this chapter and the Act received after June 1, 2020, whichever is later.

C. Applications Received After June 1, 2020: Subject to any applicable termination provisions, where an existing agreement is in place between the Village and a wireless provider relating to the collocation of small wireless facilities on Village utility poles on June 1, 2018, such agreement shall remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted after June 1, 2020, until receipt by the Village of a notice from the wireless provider that it is accepting the rates, fees, terms and conditions of this chapter.

§ 57.13 COLLOCATION ON VILLAGE OWNED INFRASTRUCTURE.

A. Fee: The annual fee to collocate a small wireless facility on a Village-owned utility pole located in a right-of-way shall be the higher of:

1. \$200/year per small wireless facility; or
2. The actual, direct, and reasonable costs related to the wireless providers use of space on the pole.

B. Exception: Small wireless facilities collocated on Village-owned utility poles located outside of public right-of-way are not subject to the rate limitations in this section.

C. Attachment Agreement: An attachment agreement in a form approved by the Village is required for any collocation upon any Village owned utility pole or wireless support structure.

§ 57.14 NOTICE OF SALE OR TRANSFER. A wireless provider shall, prior to any sale or transfer of ownership or control of a small wireless facility located within the jurisdiction of the Village, provide written notice to the Village of such sale or transfer of control. Such notice shall include the name and contact information of the new wireless provider.

§ 57.15 ABANDONMENT.

A. A small wireless facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of the facility shall remove the small wireless facility within ninety (90) days after receipt of written notice from the Village

notifying it of the abandonment. The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at its last known address. If the small wireless facility is not removed within ninety (90) days after receipt of such notice, such wireless facility shall be deemed to be a nuisance and the Village may remove or cause the removal of such facility, and recover or place a lien for its costs, pursuant to the terms of its pole attachment or other agreement for Village utility poles or through the procedures for abatement of nuisances set forth in this code.

B. In the event the Village suspects that the wireless provider is no longer using the small wireless facilities to provide wireless service, it may send the wireless provider written notice that requires the wireless provider to remove the small wireless facility or provide proof that the small wireless facility is operational and still being used within thirty (30) days, and informs the wireless provider that failure to provide proof or to remove the small wireless facility will result in the Village removing the small wireless facility at the wireless provider's cost.

§ 57.16 DISPUTE RESOLUTION.

The Circuit Court of DuPage County shall have exclusive jurisdiction to resolve all disputes arising under the Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on Village utility poles within the right-of-way, the Village shall allow the collocating person to collocate on its poles at annual rates of no more than \$200 per year per pole, with rates to be determined upon final resolution of the dispute.

§ 57.17 INDEMNIFICATION. Other than for liabilities and losses due to or caused by the sole negligence of the Village or its employees or agents, a wireless provider shall indemnify and hold the Village harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Village infrastructure or improvements, or right-of-way associated with such infrastructure or improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this chapter and the Act. A wireless provider proceeding under this chapter waives any claims it may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

§ 57.18 INSURANCE. At all times during the period in which a wireless provider's facilities are located on Village infrastructure, improvements or in right-of-way, the wireless provider shall, at its own sole cost and expense, carry the following insurance coverages:

- A. Property insurance for its property's replacement cost against all risks;
- B. Workers' Compensation insurance within statutory limits as required by law; and

C. Commercial general liability insurance with respect to its activities on the Village infrastructure, improvements or rights-of-way, including coverage for bodily injury and property damage, with limits not less than:

1. Five million dollars for bodily injury or death to each person;
 2. Five million dollars for property damage resulting from any one accident;
- and
3. Five million dollars for all other types of liability.

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and shall provide certificates of insurance and proof of inclusion of the Village in a commercial general liability policy to the Village prior to the collocation of any small wireless facility, and shall keep updated certificates and proof of inclusion on file with the Village at all times that the provider maintains small wireless facilities within the Village.

D. A wireless provider may self-insure all or a portion of the insurance coverage and limits required by the Village. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement that the Village be named an additional insured. A wireless provider that self-insures shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance limits required by the Village.

§ 57.19 MAINTENANCE OF SMALL WIRELESS FACILITIES.

A. A wireless provider shall maintain all small wireless facilities installed within the Village in a condition that maintains the safety, integrity and aesthetics of such facilities. Small wireless facilities shall not appear to be unkempt. In the event of a failure to properly maintain such facilities, the Village shall notify the wireless provider, in writing, who shall have thirty (30) days to correct the identified maintenance violation. If not corrected within such period, the Village reserves the right to take such action as it deems necessary, including revocation of the permit. Maintenance and replacement of small wireless facilities shall be performed by the wireless provider at the wireless provider's sole cost and expense.

B. In the event of an emergency involving an imminent threat to life or property, the Village may take corrective action to eliminate such emergency at the wireless provider's expense.

§ 57.20 Revocation of Permit.

A. A permit to collocate a small wireless facility may be revoked by the Community Development Director or his or her designee for one or more of the following reasons:

1. The wireless provider obtained approval by means of fraud or made a misrepresentation of a material fact with respect to the permit application, or any required documentation or submittal.

2. The wireless provider failed to construct the small wireless facility in accordance with the approved plans.

3. The wireless provider failed to comply within any material condition of a permit issued.

4. The wireless provider substantially expanded or altered the use or the structure of the small wireless facility beyond what was requested in the permit application or approved, without the approval of the Village.

5. The wireless provider failed to notify the Village of the replacement of small wireless facilities as required by this chapter.

6. A substantial change of law has occurred affecting the wireless provider's authority to occupy or use the property upon which the small wireless facility is located.

7. The small wireless facility interferes with vehicular or pedestrian use of the public right of way.

8. The wireless provider has failed to make a safe and timely restoration of the right-of-way or the property upon which the small wireless facility is located.

9. The wireless provider has failed to properly maintain the small wireless facility as required by this chapter.

10. The wireless provider has failed to abate interference with public safety communications in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

11. The small wireless facility has been abandoned and the wireless provider has failed to remove the small wireless facilities as provided in this chapter.

B. Written notification of the permit revocation shall be sent by the Community Development Director or his or her designee by certified mail or shall be personally delivered to the wireless provider setting forth the basis for the revocation. The wireless provider shall, within fourteen days of the notice of revocation, file a written response with the Community Development Director or his or her designee setting forth the reasons why the permit should not be revoked along with such evidence in opposition to the revocation as the wireless provider determines necessary. Failure to file a response with the Community Development Director or his or her designee shall be deemed an

admission of the facts set forth in the notification of written notification and shall result in automatic revocation of the permit. The Community Development Director or his or her designee shall render findings and a decision within twenty-one days of the date of receipt of the wireless provider's response, if any.

C. If the Community Development Director or his or her designee revokes the permit, the wireless provider may file a written notice of appeal with the Village Clerk within twenty-one (21) days of notification of the permit revocation. Such notice shall contain a response to the decision of the Community Development Director or his or her designee. The Village Board shall hear the revocation appeal and render a decision on such appeal.

§ 57.21 EXCEPTIONS TO APPLICABILITY.

A. Nothing in this chapter authorizes the collocation of small wireless facilities on:

1. Property owned by a private party without the written consent of the property owner;
2. Property owned or controlled by a unit of local government that is not located within rights-of-way without the written consent of the unit of local government (local governments are, however, required to authorize the collocation of small wireless facilities on utility poles owned or controlled by the local government and not located within rights-of-way to the same extent the local government permits access to utility poles for other commercial projects or uses);
3. A privately-owned utility pole or wireless support structure, without the consent of the property owner;
4. Property owned, leased or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes, without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code (605 ILCS 5/1-101 *et seq.*); or
5. Property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code (625 ILCS 5/18c-7201), Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act (220 ILCS 5/16-102), without the consent of the rail carrier, public commuter rail service, or electric utility;

B. The provisions of this chapter do not apply to:

1. Facilities of an electric or gas public utility or such utility’s wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act; or

2. Small wireless facilities owned by the Village.

SECTION 3: Section 56.16 (Location of Facilities) of Title V (Public Works), Chapter 56 (Construction of Facilities on the Public Rights-of-Way) of the Code of Itasca is amended by adding new subsections (I) (Ground-Mounted Equipment Spacing Requirements) and (J) (New Utility Pole Location Restrictions), to read in its entirety as follows:

I. Ground-Mounted Equipment Spacing Requirements. Ground-mounted equipment, where necessary, shall be sited in locations approved by the Director of Public Works, in a manner that will effectively minimize public impact, optimize safety, and incorporate aesthetic concerns.

J. New Utility Pole Location Restrictions. New above-ground utility poles, when allowed, shall be located a minimum of twelve (12) feet from driveway aprons, a minimum of five (5) feet from existing underground utility pipes owned by the Village, including but not limited to sanitary sewer, storm sewer and water main installations, and a minimum of ten (10) feet from other existing utility structures and appurtenances (fire hydrants, manholes, valves, etc.).

SECTION 4: All ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 5: Except as to the Code amendments set forth above in this Ordinance, all Chapters and Sections of the Village Code, as amended, shall remain in full force and effect.

SECTION 6: Each section, paragraph, clause and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, nor any part thereof, other than that part affected by such decision.

SECTION 7: This Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this _____ day of April, 2019.

APPROVED:

Village President, Jeffery J. Pruyn

ATTEST:

Village Clerk, Jody Conidi

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

**CLERK'S
CERTIFICATE**

I, Jody Conidi, Clerk of the Village of Itasca, in the County of DuPage and State of Illinois, do hereby certify that the attached and foregoing is a true and correct copy of that certain Ordinance now on file in my Office, entitled:

ORDINANCE NO. 1911-19

**AN ORDINANCE AMENDING TITLE V (PUBLIC WORKS) OF THE CODE OF
ITASCA TO ADD A NEW CHAPTER 57 (SMALL WIRELESS FACILITIES)
RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF SMALL
WIRELESS FACILITIES**

which Ordinance was passed by the Board of Trustees of the Village of Itasca at a Regular Village Board Meeting on the ____day of April, 2019, at which meeting a quorum was present, and approved by the Mayor of the Village of Itasca on the ____day of April, 2019.

I further certify that the vote on the question of the passage of said Ordinance by the Board of Trustees of the Village of Itasca was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Itasca, and that the result of said vote was as follows, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

I do further certify that the original Ordinance, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Itasca, this ____ day of April, 2019.

Village Clerk

RESOLUTION NO. 1113-19

RESOLUTION ADOPTING WRITTEN DESIGN STANDARDS FOR SMALL WIRELESS FACILITIES

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act (50 ILCS 840/1 *et seq.*), acts to impose certain additional requirements on municipalities, including the Village, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined small wireless facilities both within public rights-of-way and in other locations within the jurisdiction of the Village; and

WHEREAS, Title V (Public Works) of the Code of Itasca has been amended by the Board of Trustees by adding a new Chapter 57 (Small Wireless Facilities) in order to regulate the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of small wireless facilities within the Village in conformance with the Small Wireless Facilities Deployment Act; and

WHEREAS, both the Small Wireless Facilities Deployment Act and Chapter 57 of Title V of the Code of Itasca, as well as rules adopted by the Federal Communications Commission relative to the deployment of small wireless facilities, authorize the adoption of written design standards governing the installation of small wireless facilities and associated wireless support structures within the Village; and

WHEREAS, the Mayor and Board of Trustees of the Village find it to be in the best interests of the Village to adopt, as the written design standards of the Village, the General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards for small wireless facilities attached hereto as Exhibit A and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF ITASCA, DUPAGE COUNTY, ILLINOIS:

SECTION 1: Each of the recitals in the Whereas paragraphs set forth above are incorporated into Section 1 of this Resolution.

SECTION 2: The General Guidelines and Small Wireless Facility Design, Stealth and Concealment Standards attached hereto as Exhibit A and made a part hereof are hereby approved and adopted as the written design standards of the Village. These standards, once adopted, may be amended at the direction of the Village Manager as deemed necessary without further Board of Trustees review or approval, so long as such amendments are consistent with the purpose and intent of Chapter 57 (Small Wireless Facilities), Title V (Public Works) of the Code of Itasca.

SECTION 3: This Resolution shall be in full force and effect from and after its passage and approval.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this ____ day of April, 2019.

APPROVED:

Village President Jeffery J. Pruyn

ATTEST:

Village Clerk Jody Conidi

EXHIBIT A

**GENERAL GUIDELINES AND SMALL WIRELESS FACILITY DESIGN, STEALTH
AND CONCEALMENT STANDARDS**

(ATTACHED)

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

CLERK'S CERTIFICATE

I, Jody Conidi, Clerk of the Village of Itasca, in the County of DuPage and State of Illinois, do hereby certify that the attached and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. 1113-19

**RESOLUTION ADOPTING WRITTEN DESIGN STANDARDS FOR
SMALL WIRELESS FACILITIES**

which Resolution was passed by the Board of Trustees of the Village of Itasca at a Regular Village Board Meeting on the ____ day of April, 2019, at which meeting a quorum was present, and approved by the Village of President of the Village of Itasca on the ____ day of April, 2019.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Itasca was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Itasca, and that the result of said vote was as follows, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Itasca, this ____ day of April, 2019.

Village Clerk

1.0 **Recitals.** The recitals set forth above are incorporated herein and made part of this Agreement as representing the intent of the Parties, and as substantive covenants and conditions.

2.0 **Definitions.**

2.1 The capitalized terms used herein, unless specifically defined within Section 2.2 of this Agreement, are the terms defined in the Small Wireless Facilities Deployment Act (“Act”) and the Small Wireless Code, as amended.

2.2 The following definitions are specific to this Agreement and are not found in the Act.

“**Act**” shall mean the Small Wireless Facilities Deployment Act.

“**Agreement**” or “**License Agreement**” shall mean this Agreement.

“**Annual License Fee**” means the annual rate described in Section 6.3 of this Agreement.

“**CFR**” means the Code of Federal Regulations.

“**Entity**” means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, unit of local government, a receiver, trustee, guardian or other representative appointed by order of court, or any other legally recognized organization, whether for-profit or not-for-profit. The Licensor shall not be considered a "Person" or "Entity" for purposes of this Agreement.

“**Effective Date**” means the date this Agreement is executed by the last Party to sign following approval by the Licensor’s Village Board of Trustees.

“**Law(s)**” means any applicable statute, administrative or judicial act, decision, charter, code, constitution, law, opinion of a court of competent jurisdiction, court order, ordinance, policy, regulation, including procedures and the conditions of certificates as prescribed by regulation, rule, schedule, specification, rates and tariffs as established in statute, rules, or regulation, or other requirement of the Licensor or any other unit of government or agency of a unit of government having joint or separate jurisdiction over the Licensee, now or hereafter in effect, during the term of this Agreement.

“**Licensor Representative**” means the then-current person at the Licensor that oversees administration of this Agreement, or his/her designee.

“**Permit Drawing and Specifications**” means documents submitted by a Licensee, in conformance with the requirements of the Licensor, for a Site-

Specific Permit Application which depict the design, construction, installation, and maintenance of any Small Wireless Facility.

“Site-Specific Location” means a location which qualifies, under this Agreement, for the placement of, or which contains, Small Wireless Facilities allowed under a Site-Specific Permit.

“Site-Specific Permit or Permit” means a non-exclusive permit granted by the Licensor allowing the installation of Small Wireless Facilities at a Site-Specific Location.

“Site-Specific Permit Application” means the application for a permit for the installation of Small Wireless Facilities at a Site-Specific Location.

“Unauthorized Communication Site” means a Small Wireless Facility on a utility pole or a wireless support structure within the corporate limits of the Licensor that is either i. constructed or installed in a manner that does not conform to the application for a permit approved by the Licensor and that is not made to conform following notice by the Licensor and an opportunity to cure; or ii. constructed or installed without a permit or as otherwise specifically authorized by the Corporate Authorities of the Licensor. Construction or installation of a Small Wireless Facility or Utility Pole at a site under the exclusive permitting jurisdiction of another unit of local government, such as the County or State, from whom the Licensee has obtained a valid permit for such construction or installation, shall not be an Unauthorized Communication Site.

“Unauthorized Installation Charge” means the penalty payable by Licensee to Licensor under this Agreement for an Unauthorized Communication Site.

“Work” means all design, construction, restoration, maintenance, removal, repair, relocation, or modification of any Small Wireless Facility, utility pole, or wireless support structure installed by the Licensee.

3.0. **Terms.**

3.1. **Initial and Extension Term.** This Agreement shall apply to all Small Wireless Facilities proposed, permitted and installed at Site-Specific Locations on Utility Poles or Wireless Support Structures owned by the Licensor pursuant to the Small Wireless Code. The initial term of this Agreement shall be five (5) years (“initial term”) commencing on the Effective Date, unless earlier terminated in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, the extension term of this Agreement shall be for one (1) additional five (5) year term (“initial extension term”) commencing on the expiration of the initial term, provided that:

3.1.1. The Licensee has not provided the Licensor with a written notice of its intent to terminate the Agreement at the end of the initial term without renewal; and

- 3.1.2. The Licensee is in compliance with the provisions of this Agreement and applicable Laws; and
- 3.1.3. There has not been any change in the Law that materially affects the provisions of this Agreement or its enforceability; and
- 3.1.4. The Licensor or Licensee has not otherwise terminated this Agreement in accordance with its provisions.
- 3.1.5. The Act has not been repealed or been found to be unconstitutional by a court of law; and
- 3.1.6 The Act did not sunset on June 1, 2021.

Up to two (2) additional five (5) year extension terms (the “additional extension terms”) may be entered into by written mutual agreement of the Parties following the initial extension term, subject to 3.1.1 through 3.1.6. above, except that the notice from Licensee as specified in 3.1.1. will propose an additional extension term, and any such additional extension term shall be subject to the applicable Licensor code provisions or regulations in effect at the time of renewal. The Parties acknowledge that in the event this Agreement is not renewed by mutual agreement of the Parties for a first or second additional extension term, the Parties shall enter into a new agreement applicable to site-specific permits applied for after the termination date, subject to the applicable Village Code provisions or regulations in effect at that time.

3.2 New Agreement/Holdover. A Licensee may enter into a new License Agreement with the Licensor no later than six (6) months before the expiration of the initial term (if the Agreement is not renewed) extension term or additional extension term based upon the License Agreement then in effect or in accordance with such other contract rates, terms and conditions, or ordinances that may be adopted by the Licensor from time to time. If upon expiration of the initial term (if the Agreement is not renewed), extension term or additional extension term the Parties fail to negotiate the renewal of a new License Agreement, and the Licensee fails to comply with Section 3.3, the Licensee shall be deemed to holdover and shall otherwise be liable to perform its obligations of the terms and conditions of the License Agreement as well as payment of the holdover amount set forth in Section 7.1 of this Agreement. No holdover shall exceed six (6) months.

3.3 Non-Renewal. If a new License Agreement has not been executed by the Parties by the expiration of the initial term (if the Agreement is not renewed), extension term or additional extensions term, and the Parties do not otherwise agree in writing to renew, then the Licensee, at its option, shall either:

- 3.3.1 Remove the Licensee’s Small Wireless Facilities at its sole cost and expense within sixty (60) days of the expiration date of the applicable Site Specific Permit. If the Licensee fails to remove the Small Wireless Facilities by said date, the Licensor may in its discretion remove said facility pursuant to Section 10.8 herein; or
- 3.3.2 Without cost or charge to the Licensor, abandon the Licensee’s Small Wireless Facilities in place, but only if the Licensor first approves the proposed abandonment, in writing; including conditions applicable to the

abandonment. In the case of an approved abandonment in place, the Licensor may at its discretion remove said Small Wireless Facility pursuant to Section 10.8 herein; or

- 3.3.3 Sell the Licensee's Small Wireless Facility to a qualified third-party subject to the Licensor's prior written approval; which will not be unreasonably withheld.
- 3.3.4 Upon the occurrence of any circumstance set forth in this Section 3.3, this Agreement shall be deemed terminated except as to the indemnification and hold harmless provisions which shall survive until all statutes of limitations and repose applicable to a casualty occurring during the license term have expired. If a Small Wireless Facility has time remaining on its Site Specific Permit term, then the provisions of this Agreement remain in place during the remaining time on those Site Specific Permits but there shall be no right to an extension unless a new License Agreement is negotiated.

3.4 Termination. Except as otherwise provided herein, the Licensor may terminate this Agreement for cause, as defined herein, upon thirty (30) days written notice sent by the Licensor to the Licensee. In the event of a termination for cause, the Licensor may exercise its legal rights and/or equitable remedies either under this Agreement or by any other means that may be provided by law or equity, including the right, without limitation, to recover any uncollected fees that would be due and payable by the Licensee to the Licensor if this Agreement had not been terminated during the initial term, extension term or additional extension term as well as reasonable costs, including attorney's fees, incurred in the termination process, and to retain any security amounts, if any, deposited with the Licensor.

3.4.1 A termination for cause means 1) The Licensee fails to cure a material default of this Agreement within thirty (30) days after it receives the Licensor's notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) days to achieve, fails to commence and thereafter diligently continue such cure to completion within a reasonable period of time; or 2) Any agency exercising jurisdiction over the Licensee has by final order that is no longer subject to appeal, terminated or otherwise revoked the Licensee's approval, authorization, certification or license to provide the Wireless Services or Small Wireless Facilities; or 3) The Licensee installs or causes to be installed an Unauthorized Communication Site. However, cooperation with other agencies/jurisdictions to comply with their laws and procedures (as set forth in Section 4.1.3 "Compliance with Laws" and Section 8.1 "Provision of Wireless Services") shall not be an event of default or basis for termination, provided no installation is done before Licensor authorization.

3.4.2 Removal upon Termination for Cause. Upon establishment of termination for cause and after the expiration of the time period set out in Section 3.4.1 above, the right of the Licensee to operate a Small Wireless Facility within the jurisdiction of the Licensor will immediately terminate. If the Licensee has failed within ninety (90) days from the Effective Date of termination for cause to remove or cause removal of the Licensee's Small Wireless Facilities, the Licensor may at its discretion remove said Facility pursuant to Section 7 herein.

3.5 **Changes in the Law.** The Parties acknowledge that Communications Services, and Wireless Services and the law associated with communications services and wireless services is evolving at the Federal, State and local level. If during the initial term, extension term or additional extension term the Laws are adopted, amended or repealed in a manner that is binding on the Licensor and that requires the Licensor to alter existing Agreements, the Parties shall negotiate an amendment to this Agreement to the extent necessary to comply with any new Law affecting existing agreements. The Parties understand that, in general, changes in the Laws are prospective only and any prospective changes do not require an amendment to the terms in this Agreement or an obligation for the Licensor to negotiate changes to this Agreement.

4.0. **Grant and Scope of License.**

4.1 **Grant of License.** Subject to all the terms and conditions of this Agreement, the Licensor grants to the Licensee and, the Licensee accepts from the Licensor, a non-exclusive license to submit Site-Specific Permit Applications to install, and, upon installation pursuant to a valid Site-Specific Permit, to use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace Licensee's Small Wireless Facilities pursuant to said permit. All rights and obligations of the Licensee under this Agreement shall be exercised by the Licensee at its sole cost and expense unless otherwise agreed to in writing by the Parties or as otherwise required by the Laws.

4.1.1. **Site-Specific Permit.** The Licensee, as condition precedent to its right to install, use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace any of the Licensee's Small Wireless Facilities, shall prior to occupying any area, submit a Site-Specific Permit Application to the Licensor, and receive from the Licensor a Site-Specific Permit to occupy the Site-Specific Location with the Small Wireless Facilities pursuant to the Small Wireless Code.

4.1.2. **Reserved.**

4.1.3. **Compliance with Laws.** The installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of any Small Wireless Facilities shall comply with all Laws, including specifically the Small Wireless Code and Chapter 56 (Construction of Facilities on the Public Rights-of-way) of the Code of Itasca.

4.1.4. **License Only.** Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Licensee a property right or perpetual interest in the Utility Poles, Wireless Support Structures, land or the rights-of-way of the Licensor including, without limitation, any fee interest, leasehold interest, easement, or franchise right. Any interpretation of this license or a Site-Specific Permit by a Court, which would purport to create any fee, leasehold, easement, or franchise interest in the Licensee shall, twenty-four (24) hours after such determination, result in the Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit.

4.1.5 **No Warranty.** Neither the Licensor, nor any existing easement holder, franchisee, or other Licensee shall be liable to the Licensee for failure of the Licensor or the others to secure legal authority from a grantor of an easement affecting the installation of Small Wireless Facilities. It shall be the obligation of the Licensee to

ascertain any legal right held by any servient estate of an easement affecting the proposed or existing Small Wireless Facilities and to resolve those issues with the owner of the servient estate.

4.2. **Immunities.** Nothing in this Agreement shall be interpreted to override, compromise or waive any of the Licensor's statutory or common-law privileges or immunities which are all specifically reserved. There are no third-party beneficiaries of this Agreement.

4.3. **Authorized Use.** The Licensee shall use Licensee's Small Wireless Facilities for the sole purpose of providing Communications Services and Wireless Services and may only install, use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace Licensee's Small Wireless Facilities as authorized by the Site-Specific Permit.

4.4. **Control of Facilities.** Licensee's Wireless Service Providers may own the equipment installed in the Small Wireless Facilities, but in no event shall Licensee allow any other Entity to control the Licensee's Small Wireless Facilities or any portion thereof for any purpose not directly related to the Licensee's provision of Communications Services or Wireless Services. Licensee shall have no authority to assign, sell or transfer a Site-Specific Permit without the written consent of the Licensor, unless such assignment, sale or transfer is made to an affiliate of the Licensee. The Licensee is at all times liable and responsible for the obligations of this Agreement. Additionally, the Licensee shall require its Wireless Service Providers to acknowledge this Agreement and that any and all Wireless Service Providers shall be responsible for meeting the terms of this Agreement in the event the Licensee fails to do so.

4.5. **Condition of Premises.** As a material part of the consideration for this Agreement, Licensee takes and accepts the Licensor's Utility Poles, Wireless Support Structures and Rights-of-Way "as is" in the condition in which the Licensee finds them, with any and all latent and patent defects and with no express or implied warranties by the Licensor of merchantability, fitness, suitability, or fitness for any particular purpose. If the Licensee finds that a desired location is unsuitable for equipment, Licensee has the right to replace the pole with one consistent with the municipality's adopted codes and design standards, and that is suitable for the equipment. Pole will continue as the property of Licensor. The Licensee shall have the right to inspect the Utility Poles, Wireless Support Structures, and Rights-of-Way prior to installing the Small Wireless Facilities. The Licensor will be responsible for the regular maintenance of the Utility Poles, Wireless Support Structures and Rights-of-Way and will keep the Utility Poles, Wireless Support Structures and Rights-of-Way in good repair as required by all Laws. The Licensee shall be responsible for repairing any damage to the Rights-of-Way, Wireless Support Structures, or Utility Poles that is disturbed or damaged as a result of the installation, construction, reconstruction, use, operation, maintenance, repair, removal, reattaching, reinstallation, relocation or replacement of the Small Wireless Facilities. The Licensor shall have the right to temporarily remove or require the Licensee to temporarily remove the Small Wireless Facilities in order to maintain the

Utility Poles, Wireless Support Structures and Rights-of-Way, at the Licensee's sole cost and expense.

4.6 Interruption of Service. The Licensor shall not be liable to the Licensee, its customers, or anyone else for the interruption of service of the Licensee or any interference with the operation of the Licensee's Small Wireless Facilities.

4.7 Electrical. Licensee shall be permitted to connect Small Wireless Facilities to necessary electrical, fiber optic and telephone service, at Licensee's sole cost and expense. Licensee shall attempt to coordinate with applicable utility companies to provide separate service to Licensee's Small Wireless Facilities for Licensee's use. In the event that Licensee can obtain separate electrical service with a separate meter measuring usage, the Licensee shall pay the utility directly for its power consumption, if billed directly by the utility. In the event that separate electrical service is not possible or practical under the circumstances, Licensee may use existing service, at Licensee's sole cost and expense, upon the reasonable approval of Licensor. In the event that Licensee uses existing utility service at an individual Utility Pole or Wireless Support Structure, the Parties agree to provide for an additional fee in the applicable Site Specific Permit which shall cover Licensee's utility usage. The Parties agree to reflect power usage and measurement issues in each applicable Site Specific Permit.

Licensee shall be permitted at any time during the Term of each Site Specific Permit, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Utility Pole), a temporary power source, and all related equipment and appurtenances within the Utility Pole, or elsewhere on the Utility Pole in such locations as reasonably approved by Licensor. Licensee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Utility Pole. In the event such conduits affect the life expectancy of the Utility Pole, an additional fee that reflects the replacement cost of the Utility Pole may be assessed by Licensor after providing written notice to Licensee.

4.8 General Restrictions.

4.8.1. Removal, Relocation or Replacement of Utility Pole. In the event Licensor, in its reasonable discretion deems it necessary to remove, relocate or replace a Utility Pole, Licensor shall notify Licensee at least one hundred eighty (180) days prior of the need to remove or relocate its Small Wireless Facility. In such event, Licensor shall provide options for alternative locations for Licensee relocation of equipment which shall be in a mutually agreeable location ("Alternative Premises"). Licensee shall be solely responsible for all costs related to the relocation of its Small Wireless Facility to the Alternative Premises. In the event that a suitable Alternative Premises cannot be identified, Licensee may terminate the applicable Site Specific Permit. In the event of an emergency, which for purposes of this Agreement shall be considered any imminent threat to health, safety and welfare of the public, Licensor must provide as much notice

of the removal, relocation or replacement of a Utility Pole as reasonably practical under the circumstances.

4.8.2. **Damage to Utility Pole.** In circumstances where the Utility Pole is damaged, (struck by a vehicle or by lightning or otherwise knocked down), the Licensor shall have the right to remove the Utility Pole and shall notify the Licensee of the damaged Utility Pole and need to immediately retrieve the small wireless facility, at Licensee's sole cost and expense, from the Pole location as soon as reasonably practicable. In the event the small wireless facility presents an immediate threat to traffic safety following the damage, the Village may, in its sole discretion, transport the small wireless facility to a Village facility to be held for pick-up by Licensee. The Licensor shall have discretion to replace the Utility Pole, as set forth in Section 4.8.1. The Licensee shall be solely responsible for all costs related to the removal and/or reinstallation of its Small Wireless Facilities. If the utility pole needs to be replaced, and the utility pole to be replaced is or was a non-standard design or type in order to accommodate the Licensee's small wireless facility, the Licensee shall be solely responsible for the incremental costs of the replacement utility pole over the cost of a standard pole.

4.8.3. **Right-of-Way Only.** This Agreement shall only apply to Site-Specific Permits for Small Wireless Facilities located on Licensor Utility Poles and Wireless Support Structures that are located entirely within the Right-of-Way.

5.0. **Other Rights and Obligations of Licensee.**

5.1. **Rights and Obligations after Installation of Small Wireless Facilities.** Except as set forth in this Section, should Licensee wish to modify the form, fit, or function of any Small Wireless Facility during the term of this Agreement, Licensee may request, in writing, the Licensor's approval and authorization to add, attach, install, move, repair, replace, or otherwise alter or change the Licensee's Small Wireless Facilities in a manner consistent with this Agreement and with the Act and the Small Wireless Code. All written requests for this purpose shall be filed with the Licensor's Representative, who may revise the Site-Specific Permit for such Work subject to appropriate reasonable conditions, or require a new permit. All Work on the Utility Poles shall comply with the Licensor's Municipal Code.

5.1.1. **Routine Maintenance.** The Licensee shall not be required to obtain approval or a permit to perform routine maintenance. However, the Licensee shall notify the Licensor, in writing, of any routine maintenance at least forty-eight (48) hours in advance of the maintenance.

5.1.2. **Replacement of Small Wireless Facilities.** If the Licensee is seeking to replace a Small Wireless Facility with a Small Wireless Facility that is substantially similar and the same size, or smaller, than the existing Small Wireless Facility, the Licensee does not need to receive written authority or any additional permits from the Licensor. At least ten (10) days prior to the planned replacement, the Licensee shall notify the Licensor of the planned replacement and provide the Licensor with (i) the equipment specifications for the replacement of equipment, which shall include the equipment type and model numbers for the antennas and all other wireless equipment associated with the replacement Small Wireless Facility; and (ii) information sufficient to

establish that the replacement Small Wireless Facility is substantially similar. The Licensee shall provide all information necessary and requested by the Licensor to establish that the replacement Small Wireless Facility is substantially similar. The Licensor has the sole right and responsibility to determine if a proposed Small Wireless Facility is substantially similar to an existing Small Wireless Facility.

5.1.3. Micro Wireless Facilities. The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities, as defined in the Act, that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes do not require an application or authorization from the Licensor. However, the Licensee shall still notify the Licensor, in writing, of any work on Micro Wireless Facilities under this subsection at least forty-eight (48) hours in advance of that work.

5.1.4 Traffic Plan. If any of the work performed in this Section involves activities that affect traffic patterns or require lane closures, the Licensor may require the Licensee to obtain a right-of-way permit.

5.2. **Due Care.** Licensee shall at all times use due care to insure that no damage, beyond reasonable wear and tear, is caused to Utility Poles, Wireless Support Structures, Rights-of-Way, or Licensor Facilities, conduits, or any other portion of the Licensor's or others' property, including but not limited to: ground surfaces, landscaping, paved surfaces, swales, sewer drainage features, fibers, wires, cables, poles and/or conduits lawfully located on or about Utility Poles, or other physical structures on which the Licensee intends to attach and/or install Licensee's Small Wireless Facilities. Any damage which is caused by the Licensee shall be reported to the Licensor's emergency contact listed in Section 13.19 herein and in writing to the affected Party within forty-eight (48) hours of the damage. Licensee shall reimburse the affected Party upon demand for any damage caused by its employees, contractors, subcontractors, agents or representatives. The Licensee shall be fully liable for the acts or omissions of its subcontractors, agents and employees. Licensee shall install, use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace its Small Wireless Facilities in safe condition and good repair and in compliance with the requirements and conditions of this Agreement, the Act, and the Small Wireless Code. Licensee shall ensure that its employees, agents or contractors that perform work in connection with its Small Wireless Facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

5.3. **Identification of Facilities.** Licensee shall identify its Small Wireless Facilities, including, without limitation, its fibers, wires, and cables and equipment enclosures with appropriate durable visible identification tags that describe the Licensee's name, number, color, identification, code, size, and manufacture of Licensee's Small Wireless Facilities. Licensee shall consult with the Licensor Representative to make certain that such identification tags are specific to the Licensee so as not to be confused with other Entities lawfully within the area of Licensee's Small Wireless Facilities. Licensee shall comply with J.U.L.I.E protocol and shall have sole responsibility to locate Licensee's Small Wireless Facilities. Upon a change in ownership or control of Small Wireless Facilities, the new Entity shall provide updated identification tags within fourteen (14) days.

5.4. **Interference.** Licensee agrees that its license is subject at all times to the Licensor's right to use its Utility Poles and Wireless Support Structures for their primary purpose. Licensee agrees to install Small Wireless Facilities of the type and frequency which will not cause harmful interference to any equipment of the Licensor, governmental agencies, or other licensees of the Utility Poles or Wireless Support Structures which existed on prior to the date this Agreement is executed by the Parties. Additionally, the Licensee's operation of Small Wireless Facilities shall not interfere with the frequencies used by a public safety agency for public safety communications, both present and future frequencies. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. In the event any after-installed Licensee's Small Wireless Facilities cause such interference, and after Licensor has notified Licensee in writing of such interference, Licensee, at its sole expense, will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, powering down such Small Wireless Facilities and later powering up such Small Wireless Facilities for intermittent testing. Licensor agrees that Licensor and/or any other licensees of the Utility Pole or Wireless Support Structure who in the future take possession of the Pole or Structure will be permitted to install only such Small Wireless Facilities that are of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Small Wireless Facilities of Licensee. The Licensor may terminate a permit for a Small Wireless Facility based on such interference if the Licensee is not making a good faith effort to remedy the problem. With respect to interference with public safety frequencies, good faith effort must be action in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

6.0. **Costs**

6.1. **Make Ready Work:**

6.1.1. For Licensor's Utility Poles that support aerial facilities used to provide communications services or electric service, the Licensee shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations. The Licensee shall be responsible for all costs associated with make-ready work. The good faith estimate of the municipality for any make-ready work necessary to enable the Utility Pole to support the requested collocation shall include municipality pole replacement, if necessary.

6.1.2. For Licensor's Utility Poles that do not support aerial facilities used to provide communications services or electric service, the Licensor shall provide a good-faith estimate for any make-ready work necessary to enable the Utility Pole to

support the requested collocation, including pole replacement, if necessary, and shall provide the good faith estimate within ninety (90) days after receipt of a complete application. The Licensee shall be responsible for all costs associated with make-ready work.

6.1.3. Fees for make-ready work, including any Licensor Utility Pole replacement, shall not exceed actual costs or the amount charged to Communications Providers for similar work. Make-ready work can include fees and expenses incurred for review by consultants, unless the Licensor's Utility Pole does not support aerial facilities used to provide communications services or electric service.

6.1.4 Make-ready work may include work needed to accommodate additional public safety communications needs that are associated with the deployment of public safety equipment for attachment within one (1) year of the application.

6.3. **Annual License Fee.** The Licensees shall pay, on an annual basis, the higher of TWO HUNDRED AND NO/100 DOLLARS (\$200.00) or such other amount as authorized by law and set forth in the Licensor's Municipal Code ("Annual License Fee").

6.4 **Timing of Annual License Fee Payments.** Upon the final inspection of an initial Site-Specific Permit the Licensee shall pay the full Annual License Fee for that Site-Specific Location. Annual License Fees, for all Site-Specific Locations, shall thereafter be due and payable by the Licensee on January 1st of each year.

6.5 **Late Payment Interest.** Any Annual License Fees not paid within sixty (60) days of due date will be assessed a rate of 10% per annum from the due date.

6.6. **Failure to Pay.** Licensee's failure to pay any costs or Annual License Fees under this Agreement within thirty (30) days of the due date shall constitute a material default, if Licensee fails to cure as provided in Section 3.4.1. Licensee's obligation to pay all previously incurred costs, fees, and right-of-way fees shall survive the expiration or earlier termination of this Agreement. If a failure to pay has not been cured within thirty (30) days of the default, the applicable Site Specific Permit shall terminate and Licensee shall remove Licensee's Small Wireless Facilities within the timeframe specified in Section 7. Licensee's failure to remove within the time required will authorize the Licensor at its discretion to remove said facility pursuant to Section 7 herein.

7.0 **Abandonment and Removal of Small Wireless Facilities**

7.1. **Licensee's Obligation to Remove.** The Licensee has an obligation to remove its Small Wireless Facilities, and restore the Utility Pole, Wireless Support Structures, and Rights-of-Ways to their original condition, reasonable wear and tear and casualty damage excepted. This obligation arises: (1) upon termination of this Agreement; (2) upon the termination of any Site Specific Permit; (3) when the Licensee is no longer using a Small Wireless Facility to provide Wireless Services; or (4) when the Licensee abandons the Small Wireless Facilities. Licensor agrees and

acknowledges that all of the equipment and Small Wireless Facilities of the Licensee shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes Licensee to remain on the Property after termination of the Site Specific Permit, Licensee shall pay a holdover fee in the amount of \$250 per month until such time as the removal of the Small Wireless Facilities is completed. The Licensor shall have the authority at any time to order and require Licensee to remove and abate any Small Wireless Facilities that are in violation of the Licensor's Right of Way regulations or Small Wireless Code.

7.2. Licensor's Authority to Remove Small Wireless Facilities. In the event that the Licensee fails to remove a Small Wireless Facility within ninety (90) days from the termination of this Agreement or a Site Specific Permit, or from the date of written notice from the Licensor demanding the removal, the Licensor shall have the right to take such action as it deems necessary to remove the Small Wireless Facility, including the authority to engage the services of an independent contractor or through any code provisions regarding the abatement of nuisances. All notices of removal or abandonment shall be sent by certified or registered mail, return receipt requested, by the Licensor to the Licensee at the last known address of the Licensee. In the event that Licensor removes a Small Wireless Facility pursuant to this Agreement, the Licensee shall pay the Licensor, upon demand, the Licensor's actual and reasonable cost of removal of the Small Wireless Facility and for any other losses or damages incurred by the Licensor by such undertaking. This obligation shall survive termination or expiration of this Agreement. Alternatively, pursuant to the requirements of the Municipal Code, the Licensor may use any bond or letter of credit deposited by the Licensee to cover the cost of any removal. If the Licensor removes the Licensee's Small Wireless Facility in accordance with this Agreement, the Licensor shall have no obligation to protect, store, recycle, or otherwise conserve the removed Small Wireless Facility. The Licensor shall have no obligation to pay or reimburse the Licensee for any Small Wireless Facility removed by the Licensor. Any monies secured by the Licensor as a result of repurposing all or part of the Small Wireless Facility may be applied by the Licensor to its general fund.

7.3. Abandoned Communications Equipment. If the Licensor suspects that the Licensee is no longer using the Small Wireless Facilities to provide Wireless Service, it may require the Licensee to provide evidence that the Small Wireless Facilities are still operational and that they are being used to provide Wireless Service. If the Licensor suspects that a Small Wireless Facility has been abandoned, it may send the Licensee written notice that: (1) it suspects that a Small Wireless Facility has been abandoned; and (2) requires the Licensee to remove the Small Wireless Facility or provide proof that the Small Wireless Facility is operational within thirty (30) days; and (3) informs the Licensee that failure to provide proof or to remove the Small Wireless Facility will result in the Licensor removing the Small Wireless Facility and that the cost of removal is the

Licensee's responsibility, as set forth in Section 7.2. A Small Wireless Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned.

8.0. Installation and Replacement of Small Wireless Facilities.

8.1. Provision of Communication Service. This Agreement shall include new types of Small Wireless Facilities that may evolve or be adopted using wireless technologies. Licensee shall, at its expense, comply with all Laws in connection with the use of the Rights-of-Ways or other property. For Site-Specific Locations in the Right of Way, said locations may be used by Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of Small Wireless Facilities approved by a Site-Specific Permit by the Licensor from time to time for Communication Services or Wireless Services and not for any other purpose whatsoever.

8.2. Ongoing Inspections. The Licensor shall have the ongoing right to inspect any Site-Specific Location or Work related to the Licensee's Small Wireless Facilities as it deems appropriate.

8.3. Unauthorized Installation Charge. If the Licensee installs an Unauthorized Communication Site, the Licensee acknowledges it will be fined in the amount of seven hundred and fifty dollars (\$750.00) per day for each day the violation exists, and the Licensor may remove or cause the removal of any facility without notice to the Licensee thereof. Payment of the penalty shall not authorize the presence of the Unauthorized Communication Site at the specific location without a Site-Specific Permit. No action or inaction by the Licensor with respect to unauthorized use of any Right-of-Way or other Licensor property shall be deemed to be a ratification of an unauthorized use or waiver of any provision of this Agreement.

8.4. Removal. Licensee may in its discretion remove its Small Wireless Facilities at its own cost and expense provided that it has given the Licensor Representative notice of the removal and has been issued any necessary permits to do so.

8.5. Failure to Restore or Remove. The Licensor may, in accordance with the terms of this Agreement or as otherwise authorized by law, at the Licensee's sole cost and expense, remove Small Wireless Facilities or cause their removal without liability on the part of the Licensor, and the Licensee shall pay the Licensor, upon demand, the Licensor's actual and reasonable cost of removal and for any other losses or damages incurred by the Licensor by such undertaking. This obligation shall survive termination or expiration of this Agreement.

9.0. Indemnity, Waiver, Risk of Loss.

9.1. Licensee Indemnification. The Licensee agrees to defend, indemnify and hold the Licensor and its elected and appointed officials and officers, employees,

agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, liability, losses and expenses, including reasonable attorney's fees and costs of suit or defense from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Licensor's Utility Poles or Rights-of-Way associated with such improvements by the Licensee or its employees, agents, contractors, subcontractors, arising out of the rights and privileges granted under the Act or this Agreement; provided, however that the Licensee has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Licensor or its employees or agents.

9.2. **Waiver.** The waiver by a Party of any breach or default or violation of any provision, by any other party, shall not be deemed to be a waiver or continuing waiver by that Party of any subsequent breach or default or violation of the same or any other provision.

9.3. **Risk of Loss.** The Licensee shall assume all responsibility for promptly reimbursing the Licensor, or its franchisees, for any of their losses or expenses associated with damages caused directly or indirectly by the Licensee, its employees, agents and/or contractors or subcontractors in the Rights-of-Way, including without limitation to any poles or conduits, sewers, gas, water, electric lines, fiber or cable communication lines, caused by the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of the Licensee's Small Wireless Facilities. The Licensee shall provide immediate notification to the affected Party or Entity upon the occurrence of any such damage.

9.4. **Limitation.** Notwithstanding the foregoing, neither Party shall have any liability to the other under this Agreement or otherwise for special, punitive or consequential damages, including without limitation, damages for lost profits or business interruption.

10.0. **Insurance Requirements and Securities.**

10.1. The Licensee's financial integrity is of interest to the Licensor; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage, which will satisfactorily insure the Licensee and, where appropriate, the Licensor against claims and liabilities which may arise out of the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of Small Wireless Facilities. Such insurance shall be issued by companies licensed to do business in the State of Illinois, with an A.M. Best's rating of no less than A-VII, and subject to the approval by the Licensor, not to be unreasonably withheld or delayed, unless the Licensee is self-insured. Such insurance shall be in the types and for an amount not less than those listed in Section 57.18 of the Small Wireless Code Licensor's Municipal Code.

10.1.1. The liability insurance policies required by this section shall be maintained by the Licensee throughout the terms of the Agreement, and such other period of time during which the Licensee is operating without a license hereunder, or is engaged in the removal of its Small Wireless Facilities. Each such certificate of insurance and insurance policy shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the Licensor of a written notice addressed to the Licensor of such intent to cancel or not to renew.”

10.1.2. In no event later than thirty (30) days prior to such cancellation, the Licensee shall obtain and furnish to the Licensor replacement insurance policies meeting the requirements of this section and of Section 57.18 of the Small Wireless Code.

11.0. **Emergency Contacts.**

11.1. **Licensee’s Duty to Maintain Current Emergency Contacts.** Licensee will maintain the emergency contact information current at all times with the Licensor Representative.

12.0. **Representations and Warranties.**

12.1. **Representations and Warranties of the Parties.** As of the Effective Date, each Party represents and warrants to the other Party that:

- 12.1.1. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- 12.1.2. The execution, delivery, and performance of this Agreement and its exhibits are within its powers, have been duly authorized by all legally necessary actions, and do not violate any of its governing documents, any contracts with any joint owners to which it is a party, or any Law;
- 12.1.3. This Agreement and its exhibits and any other document executed and/or delivered in accordance with this Agreement constitute a legally valid and binding obligation, enforceable against it in accordance with its covenants, terms, conditions, and provisions;
- 12.1.4. It has not filed and it is not now contemplating the filing for bankruptcy protection and, to its knowledge, no action is threatened against it which would result in it being or becoming bankrupt;
- 12.1.5. There is not, to its knowledge, pending or threatened against it or any of its affiliates, any legal or administrative proceedings that could materially and adversely affect its ability to perform its obligations under this Agreement; and
- 12.1.6. No “event of default” or potential “event of default” with respect to it has occurred or is continuing and no such event or circumstance would occur

as a result of its entering into or performing its obligations under this Agreement.

12.2 Representations and Warranties of the Licensee. The Licensee represents and warrants to the Licensor that:

12.2.1. The Licensee has all approvals, authorizations, certifications, licenses, and franchises required by the State of Illinois, the FCC and/or any other agency to provide the Communications Service and Wireless Service; and

12.2.2. The Licensee is not aware of any facts or circumstances that would call into doubt the continuing validity of any such approvals, authorizations, certifications, licenses, or franchises; and

12.2.3. There is not pending or, to the Licensee's knowledge, threatened against the Licensee or its parent corporation or any of its subsidiaries or affiliates, any legal or administrative proceedings that could materially and adversely affect the validity of such licenses, authorizations, or franchises; and

12.2.4. All Work to be performed by the Licensee pursuant to this Agreement will be (i) performed in a good and workmanlike manner, consistent with any Permit specifications, manufacturer's specifications, prevailing industry standards, applicable Laws, and the provisions of this Agreement, and (ii) that it will be free from defects.

13.0. Miscellaneous Provisions.

13.1. **No Bar to Other Relief.** Nothing contained in this Agreement will prevent or otherwise restrict either Party from pursuing its rights at law or in equity, including injunctive relief and specific performance, in the event of a default and a material breach by the other Party.

13.2. **Immediate Relief.** Except for challenges to the validity of this Agreement or portions hereof which are specifically waived and released, nothing in this Agreement shall be deemed or construed to prohibit a Party from obtaining judicial, regulatory, or other relief necessary in order to preserve the status quo or prevent the loss or violation of that Party's rights.

13.3. **Amendments.** This Agreement may not be amended except pursuant to a written instrument signed by the Parties.

13.4. **Assignment.** This Agreement is personal to only the Licensee and no other Entity. The Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement, or any of the rights and obligations of the Licensee established by this Agreement without written approval of the Licensor. Any assignment or transfer of this Agreement shall be void, and the Licensor may terminate this Agreement if the Licensee attempts to assign or transfer this Agreement without compliance hereof.

13.4.1. The preceding sentences of this Section notwithstanding, the Licensee may assign or transfer this Agreement to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation, affiliate, or successor in interest first agrees, in writing, to be fully bound by this Agreement and the exhibits and to jointly assume all of the Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. The Licensor Representative shall be notified of assignment or transfer.

13.4.2. The preceding sentences of this Section notwithstanding, if Licensee sells or otherwise transfers all or substantially all of its assets, then, upon the provision of written approval from the Licensor, which will not be unreasonably withheld, Licensee may assign or otherwise transfer this Agreement and the rights and obligations hereunder without the approval of the Licensor so long as the transferee is not statutorily unfit to hold such a license. For the avoidance of doubt, if Licensee owns the underlying land at any site specific location, the mere sale or other transfer of the land shall not affect this License.

13.5. **Sublicensing.** The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Wireless Facilities deployed by Licensee in the rights-of-way pursuant to this Agreement may be owned and/or operated by Licensee's third-party Wireless Service Providers and installed and maintained by Licensee pursuant to license agreements between Licensee and such Wireless Service Providers. Such Small Wireless Facilities shall be treated as Licensee's facilities for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such facilities, (ii) the Licensor's sole point of contact regarding such facilities shall be Licensee, and (iii) Licensee shall remain responsible and liable for the removal and relocation of such facilities per the Agreement. However, all Wireless Service Providers shall agree, in writing, to be fully bound by this Agreement and to jointly assume all of the Licensee's obligations and liabilities hereunder. Licensee shall not grant such Wireless Service Providers rights of access to such facilities. The Licensor acknowledges that Licensee may include third party-owned equipment in its initial installation of Small Wireless Facilities and that such inclusion shall not be considered a sublicense to a third party subject to the provisions of this section.

13.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

13.7. **Exhibits.** As of the Effective Date, all exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to and duly executed amendments to this Agreement, are by such reference incorporated in this Agreement and shall be deemed a part hereof as if fully set forth herein.

13.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws rules or principles.

13.9. **Headings.** The headings hereof are inserted for convenience of reference only, are not a part hereof, and shall have no effect on the construction or interpretation hereof.

13.10. **Independent Contractor.** Each Party to this Agreement acts as an independent contractor and not as an employee of the other Party. Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate, or agency relationship between the Licensor and the Licensee.

13.11. **Resolving Conflicting Provisions.** To the extent the provisions and any other authorizations and approvals required to be obtained by the Licensee from the Licensor are in conflict, the provisions of the Agreement, authorizations and approvals which impose(s) the higher or greater legal duty or obligation upon the Licensee shall take precedence.

13.12. **Rules of Construction.** Each Party and its counsel have reviewed this Agreement. Accordingly, the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the construction and interpretation hereof.

13.13. **Severability.** If a court of competent jurisdiction finds or rules that a provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

13.14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assignees of the Parties and approved successors.

13.15. **Time of Action.** For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any day observed as an official holiday by the Licensor, the time for performance shall be extended to the following Business Day.

13.16. **Jurisdiction and Venue.** Exclusive jurisdiction and venue for any and all disputes related in any manner to this Agreement, regardless of their basis or nature, shall be in the Circuit Court of DuPage County.

13.17. **No Recording.** Licensee shall not record this Agreement or any other document referred to herein without the written consent of the Licensor.

13.18. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements, or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.

13.19. **Notices.** All notices which shall or may be given pursuant to this Agreement shall be given, in writing, and shall be deemed validly given if delivered or sent by certified mail, return receipt requested, or by commercial courier, provided the commercial courier's regular business is delivery service, and addressed, as follows:

LICENSOR: The Village of Itasca
 Attn: Village Administrator
 550 W Irving Park Road
 Itasca, IL 60143-1795

Copy to: Charles Herves
 Village Attorney
 Herves, Condon & Bersani, P.C.
 333 Pierce Road, Suite 195
 Itasca, IL 60143-3156

24/7 EMERGENCY CONTACT: **Phone Number**

Any notice to be sent to the Mayor or Corporation Counsel shall be sent to the same address referred to above.

Licensee:
 Name
 Company
 Address
 Licensor, State Zip

Copy to: Name
 Company
 Address
 Licensor, State Zip

24/7 EMERGENCY CONTACT: Phone Number

13.20. **No Waiver.** A waiver by the Licensor of any breach of one or more of the terms of this Agreement shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of the Licensor to require exact, full, and complete compliance with the terms contained herein be construed as changing the terms of this Agreement or as stopping the Licensor from enforcing full

compliance with the provisions herein. No delay, failure, or omission of the Licensor to exercise any right, power, privilege, or option arising from any breach shall impair any right, power, privilege, or option, or be construed as a waiver or acquiescence of such breach or as a relinquishment of any right. No right, power, privilege, or option of the Licensor shall be construed as being exhausted by the exercise thereof in one or more of the instances. The rights, powers, privileges, and options given to the Licensor under this Agreement and by law shall be cumulative.

13.21 Casualty. In the event of damage by fire or other casualty to a Utility Pole or Wireless Support Structure on which Small Wireless Facilities are located that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Utility Pole or Wireless Support Structure Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days, then Licensee may, at any time following such fire or other casualty, provided Licensor has not completed the restoration required to permit Licensee to resume its operation at the Premises, terminate the Site Specific Permit upon fifteen (15) days prior written notice to Licensor. Any such notice of termination shall cause the Site Specific Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Site Specific Permit and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Site Specific Permit. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Licensee's use of the Premises is impaired.

13.22 Applicable Laws. During the term of this Agreement, Licensor shall use and maintain the Utility Poles, Wireless Support Structures, and Rights-of-Way in compliance with all Laws. Licensee shall, in respect to the condition of the Small Wireless Facilities and at Licensee's sole cost and expense, comply with (a) all Laws relating solely to Licensee's specific and unique nature of use of the Small Wireless Facilities; and (b) all building codes requiring modifications to the Small Wireless Facilities due to the improvements being made by Licensee to the Small Wireless Facilities.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below with their respective signatures, to be effective as of the date of the signature of the last Party to sign.

Licensee

Date

Licensor

Date