

CHAPTER 8

CABLE TELEVISION

ARTICLE I – MADISON COMMUNICATIONS COMPANY

8-1-1 **AGREEMENT FOR CABLE TELEVISION SERVICE.** The Village does hereby adopt the following Cable Television Agreement with Madison Communications Company as Appendix "A".

ARTICLE II – SERVICE PROVIDER FEE

8-2-1 **FEE ESTABLISHED.** A service provider fee of **five percent (5%)** of the Gross Revenue received by MCI or any other cable and/or video service provider that provides cable and/or video service within the Village pursuant to a franchise issued by the Illinois Commerce Commission pursuant to the Act, is hereby adopted and imposed, all in accordance with **220 ILCS 5/21-801**. Such fee shall be collected and paid to the Village in accordance and pursuant to the terms of the Act. **(Ord. No. 18-16; 08-11-18)**

ARTICLE III – SMALL WIRELESS FACILITIES

8-3-1 PURPOSE AND SCOPE.

(A) **Purpose.** The purpose of this Article is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the Village’s jurisdiction, or outside the rights-of-way on property zoned by the Village exclusively for commercial or industrial use, in a manner that is consistent with the Act. Siting and collocation of small wireless facilities outside the rights-of-way on property zoned by the Village for uses other than exclusively commercial or industrial uses shall be governed by the zoning and building ordinances applicable to property zoned for such other uses.

(B) **Conflicts and Other Ordinances.** This Article supersedes all ordinances or parts of ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(C) **Conflicts with State and Federal Laws.** In the event that applicable federal or State laws or regulations conflict with the requirements of this Article, the wireless provider shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

8-3-2 DEFINITIONS. For the purposes of this Article, the following terms shall have the following meanings:

Antenna: Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes: 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: Any person who submits an application and is a wireless provider.

Application: A request submitted by an applicant to the Village for (i) a permit to collocate small wireless facilities, and/or (ii) installation of a new utility pole for collocation of small wireless facilities, as well as any applicable fee for the review of such application.

Collocate or collocation: To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications service: 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(53) as amended; or wireless service other than mobile service.

Communications service provider: 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: The Federal Communications Commission of the United States.

Fee: A one-time charge.

Historic district or historic landmark: 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 (a) 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 (b) where such certification of the preservation program proposed by the Village is pending with the Illinois State Historic Preservation Office.

Law: A federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro wireless facility: 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**.

Municipal utility pole: A utility pole owned or operated by the Village in public rights-of-way.

Permit: A written authorization required by the Village to perform an action or initiate, continue, or complete a project.

Person: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public safety agency: 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.

Rate: A recurring charge.

Right-of-way: 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 Village-owned aerial lines.

Small wireless facility: 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.

Utility pole: 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.

Wireless facility: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (1) 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: 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: A wireless infrastructure provider or a wireless services provider.

Wireless services: 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: A person who provides wireless services.

Wireless support structure: 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.

8-3-3 REGULATION OF SMALL WIRELESS FACILITIES.

(A) **Permitted Use.** Except as otherwise provided in **Section 8-3-3(C)(9)** below (regarding Height Exceptions or Variances), small wireless facilities are hereby classified as permitted uses, subject only to administrative review, and not subject to zoning review or approval, if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use, notwithstanding any statement to the contrary in any other ordinance adopted by the Village.

(B) **Permit Required.** An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

- (1) **Application Requirements.** A wireless provider shall provide the following information to the Village, together with the Village's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
 - (a) Site specific structural integrity and, for a municipal 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, as such act may be amended from time to time (the "SEPA");
 - (b) The location where each proposed small wireless facility or utility pole would be installed and 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. This should include a depiction of the completed facility in that location;
 - (c) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the SEPA, for each proposed small wireless facility covered by the application as it is proposed to be installed;
 - (d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;

- (e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
 - (f) Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge. For purposes of this Section, the applicant's knowledge includes not only the knowledge of the person signing the certification but, also, the knowledge of all officers of the applicant and of each employee or agent of the applicant involved with the proposed small wireless facility.
 - (g) In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Village, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.
- (2) **Application Process.** The Village shall process applications as follows:
- (a) The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
 - (b) An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the Village fails to approve or deny the application within **ninety (90) days** after the submission of a completed application. However, 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; and prior to the **ninetieth (90th) day** after the submission of the completed application. Unless otherwise approved or rejected by the Village within **ninety (90) days** after submission of the completed application, the permit shall be deemed approved on the later of the **ninetieth (90th) day** after submission of the complete application or the **tenth (10th) day** after the receipt of the deemed approved notice by the Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Article.
 - (c) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the Village fails to approve or deny the

application within **one hundred twenty (120) days** after the submission of a completed application.

However, 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; and prior to the **one hundred twentieth (120th) day** after the submission of the completed application.

Unless otherwise approved or rejected by the Village within **one hundred twenty (120) days** after the submission of the completed application, the permit shall be deemed approved on the later of the **one hundred twentieth (120th) day** after submission of the complete application or the **tenth (10th) day** after the receipt of the deemed approved notice by the Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Article.

- (d) The Village may, on a non-discriminatory basis, deny an application which does not meet the requirements of this Article.

If the Village determines that applicable codes, ordinances, or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the applicant and/or the wireless provider.

The Village shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the Village denies an application.

The applicant may cure the deficiencies identified by the Village and resubmit the revised application once within **thirty (30) days** after notice of denial is sent to the applicant without paying an additional application fee. The Village shall approve or deny the revised application within **thirty (30) days** after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within **thirty (30) days** of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the Village's review period. The application shall be reviewed after completed applications that have been submitted before it.

The applicant must notify the Village in writing of its intention to proceed with the permitted activity on a deemed approved basis (if denial is not received within **thirty (30) days** after submission of the revised application), which notification may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial (so long as other provisions of the application have not been changed). However, this limitation does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other new or different wireless equipment associated with the small wireless facility.

- (e) **Pole Attachment Agreement.** Within **thirty (30) days** after an approved permit to collocate a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a Master Pole Attachment Agreement, in the form provided by the Village, for the initial collocation on a municipal utility pole by such approved application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.
- (3) **Completeness of Application.** Within **thirty (30) days** after receiving an application, the Village shall determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. An application shall be deemed complete if the Village fails to provide notification to the applicant within **thirty (30) days** after all documents, information and fees specifically enumerated in the Village's permit application form are submitted by the applicant to the Village.
Processing deadlines are tolled from the time the Village sends the notice of incompleteness to the time the applicant provides the missing information.
- (4) **Tolling.** The time period for applications may be further tolled by:
 - (a) An express written agreement by both the applicant and the Village; or
 - (b) A local, State, or federal disaster declaration or similar emergency that causes the delay.
- (5) **Consolidated Applications.** An applicant seeking to collocate small wireless facilities within the jurisdiction of the Village shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to **twenty-five (25)** small wireless facilities, if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the Village may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The Village may issue separate permits for each collocation that is approved in a consolidated application.

- (6) **Duration of Permits.** The duration of a permit shall be for a period of not less than **five (5) years**, and the permit shall be renewed for equivalent durations unless the Village makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable Village codes or any provision, condition, or requirement contained in this Article.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable Village code provisions or regulations in effect at the time of renewal.

- (7) **Means of Submitting Applications.** Applicants shall submit applications, supporting information, and notices to the Village by personal delivery at the Village's designated place of business, by regular mail postmarked on the date due, or by any other commonly used means, including electronic mail, by which the application is received by the Village no later than the date due.

(C) **Collocation Requirements and Conditions.**

- (1) **Public Safety Space Reservation.** The Village may reserve space on municipal utility poles for future public safety uses, for the Village's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the Village reasonably determines that the municipal utility pole cannot accommodate both (or all three) uses.

- (2) **Installation and Maintenance.** The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Article. The wireless provider shall ensure that its employees, agents, and/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, laws, and regulations.

- (3) **No Interference with Public Safety Communication Frequencies.** The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

A wireless provider shall 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 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.

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 remedy the interference 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 Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph (or the then applicable regulations). Failure to remedy the interference as required herein shall constitute a public nuisance.

- (4) The wireless provider 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 such space and/or the top of the pole. For purposes of this subparagraph, 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, as amended from time to time.
- (5) The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
- (6) The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, and reasonable stealth, concealment, and aesthetic requirements that are set forth in any Village ordinance, written policy adopted by the Village, the Village's comprehensive plan, and any other written design plan that applies to other occupiers of the rights-of-way, including those applicable to historic landmarks and/or historic districts.
- (7) **Alternate Placements.** Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within **one hundred (100) feet** of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on

reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the Village, the applicant shall provide written certification to the Village describing the property rights, technical limits, or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- (8) **Height Limitations.** The maximum height of a small wireless facility shall be no more than **ten (10) feet** above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- (a) **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 to the Village, 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 jurisdictional boundary of the Village, provided 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

- (b) **forty-five (45) feet** above ground level.

- (9) **Height Exceptions or Variances.** If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in conformance with procedures, terms and conditions set forth in the Village's Zoning Code as set forth in the Hamel Revised Code of Ordinances.

- (10) **Contractual Design Requirements.** The wireless provider shall comply with requirements that are imposed by a contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

- (11) **Ground-mounted Equipment Spacing.** The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.

- (12) **Undergrounding Regulations.** The wireless provider shall comply with all local code provisions or regulations concerning

undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.

- (13) **Collocation Completion Deadline.** Collocation for which a permit is granted shall be completed within **one hundred eighty (180) days** after issuance of the permit, unless the Village and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider 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. Otherwise, the permit shall be void, unless the Village grants an extension in writing to the applicant.

(D)

Application Fees. Application fees are imposed as follows:

- (1) Applicant shall pay an application fee of **Six Hundred Fifty Dollars (\$650.00)** for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and **Three Hundred Fifty Dollars (\$350.00)** for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- (2) Applicant shall pay an application fee of **One Thousand Dollars (\$1,000.00)** for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- (3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (4) The Village shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - (a) routine maintenance;
 - (b) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least **ten (10) days** prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with (d) under the Section titled Application Requirements; or
 - (c) the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles, so long as such installation, placement, maintenance,

operation, or replacement is in compliance with all applicable safety codes.

- (5) Wireless providers shall secure a permit from the Village to work within rights-of-way for activities that affect traffic patterns or require lane closures.

(E) **Exceptions to Applicability.** Nothing in this Article authorizes a person to collocate small wireless facilities on:

- (1) property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
- (2) property owned, leased, or controlled by a part 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; or
- (3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, any public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Article do not apply to 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 16108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Article shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Article.

(F) **Pre-Existing Agreements.** Existing agreements between the Village and wireless providers that relate to the collection of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Village utility poles, that are in effect on **June 1, 2018**, if any, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village before **June 1, 2018**, subject to applicable termination provisions contained therein. Agreements entered into after **June 1, 2018**, shall comply with this Article.

Notwithstanding the foregoing, a wireless provider that has an existing agreement with the Village on the effective date of the Act may opt, instead, to accept the rates, fees, and terms that the Village makes available under this Article for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities by submitting a completed application for such small wireless facilities no sooner than **two (2) years** after the effective date of the Act, along with a notification to the Village that the

wireless provider opts to accept the rates, fees, and terms hereunder, rather than under its existing agreement. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the Village's utility poles pursuant to applications submitted to the Village before the wireless provider provides such notice and exercise its option under this paragraph.

(G) **Annual Recurring Rate.** A wireless provider shall pay to the Village an annual recurring rate to collocate a small wireless facility on a Village utility pole located in a right-of-way that equals (i) **Two Hundred Dollars (\$200.00)** per year or (ii) the actual, direct, and reasonable costs related to the wireless provider's use of space on the Village utility pole.

If the Village has not billed the wireless provider actual and direct costs, the fee shall be **Two Hundred Dollars (\$200.00)** payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter. If the Village has billed the wireless provider actual and direct costs prior to such annual anniversary, the fee shall be such actual and direct costs; and shall be paid (i) no later than the annual anniversary date, or (ii) within **ten (10) business days** after the Village has provided such actual and direct costs to the wireless provider, whichever is later.

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

The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within **ninety (90) days** of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery, and charge the wireless provider for all costs incurred in such removal.

A wireless provider shall provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

8-3-4 DISPUTE RESOLUTION. The Circuit Court of Madison County, Illinois shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal 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 **Two Hundred Dollars (\$200.00)** per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

8-3-5 INDEMNIFICATION. 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 improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Article and/or the Act. A wireless provider 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

Village or its employees or agents. A wireless provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

8-3-6 **INSURANCE.** The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (A) property insurance for its property's replacement cost against all risks;
- (B) workers' compensation insurance, as required by law; or
- (C) commercial general liability insurance with respect to its activities on the Village improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of Village improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Village in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement 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 for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the Village.

(Ord. No. 18-12; 07-10-18)

APPENDIX "A"

AGREEMENT

This Agreement, made and entered into this 3rd day of February, 1998, by and between Village of Hamel, hereinafter referred to as Municipality, and Madison Communications, Inc., an Illinois Corporation, or an affiliated entity in which Madison Communications, Inc. is part and recognized holder of interest, hereinafter referred to as Company.

Witnesseth:

WHEREAS, the Company proposes to furnish various entertainment and information programming along with other electronic services as may be desired from time to time to the residents of the Municipality; and

WHEREAS, Municipality is willing to permit to the extent that it may lawfully do so and is desirous of making the Company's services available to the residents of the Municipality.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto mutually agree and covenant as follows:

Section 1. Definitions. For the purpose of the Agreement the following terms, phrases, words and their derivations shall have the meaning given here when not inconsistent with the content. Words used in the present tense include the future. Words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Ancillary Channel" shall mean a frequency in the electromagnetic spectrum capable of clearly and effectively carrying signals including but not limited to aural and visual, but whose content is separate from that which is defined in programming services.

"Ancillary Services" shall mean any other signals or services transmitted on the system which the Company offers for consumption by the subscribers.

"Audio Channel" shall mean a frequency in the electromagnetic spectrum capable of clearly and effectively carrying an audio signal which is intended to be received by a standard audio or radio receiver.

"FCC" shall mean the Federal Communications Commission established by the Communications Act of 1934 as amended, and shall include any successor agency or other agency with respect to the federal regulation in connection with the execution of this Agreement.

"Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

"Programming Services" shall mean the entertainment and information programs provided by the Company through the use of its system to the residents of the Municipality.

"Public Right of Way" shall mean all sidewalks, streets, alleys and easements within the Municipality which are dedicated by the Municipality for streets, highways, sidewalks, lighting, drainage or utilities and all other public ways and places contiguous thereto.

"Receive Site" shall mean the Company's facility for receiving, amplifying and processing various electronic signals for the purpose of transmission through the system.

"Subscriber" means any person lawfully purchasing the services available through the Company's system.

"System" shall mean the Company's entire electronic transmission and distribution facility located within the Municipality.

"Video Channel" shall mean a frequency in the electromagnetic spectrum capable of clearly and effectively carrying a signal, both audio and visual, which is intended to be received by a standard receiver.

Section 2. Scope. The Company, its successors and assigns hereby agrees to erect, maintain and operate electronic transmission and distribution facilities in addition to the necessary terminal and reception equipment in, under, along, across and upon the streets, avenues, sidewalks, alleys and other public places within the Municipality and subsequently annexed additions for the purpose of transmission and distribution of various entertainment and information programming, various communications and other electronic services in accordance with the laws and regulations of the United States of America, the State of Illinois and the Municipality for a period of 20 years from and after the effective date on this Agreement unless sooner terminated as herein provided. This Agreement is nonexclusive to both parties.

Section 3. Facilities, Construction and Operation. The Company's system shall be primarily underground, however, the Company may upon approval from the Municipality use the poles or the suspension facilities of the utility companies serving the Municipality. Where necessary to construct the system beneath existing pavement surfaces, the Company shall make its best effort to bore beneath such surfaces so as not to in any means disrupt or disturb them from their existing condition. Should it be necessary to disturb any existing pavement surface, the Company shall, at its own expense and effort, properly backfill any excavation and restore the surface of the pavement to a condition reasonably equal to that which existed prior to such excavation and to subsequently correct, by additional backfilling or restoration, any sinking or settlement of such excavation or deterioration of such surfaces, except that which might occur during the normal course of wear and tear. The Company, when placing its distribution facilities in areas excluding surface pavement, shall make every effort to construct in a manner which will provide the least disruption to the prior existing surface condition of that area. Should trenching be necessary, the Company shall backfill and restore the surface of the ground to a condition reasonably equal to the condition prior to such trenching, including reseeding or sodding as the specific situation requires.

Section 4. Right of Way Occupancy.

(A) **Use.** The Company's transmission and distribution system, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with the improvements the Municipality may deem proper to make, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges or other public property.

(B) **Restoration.** In case of the disturbance of any pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Municipality's Authorized Agent, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good a condition as before said work was commenced.

(C) **Location.** In the event that at any time during the period of this Agreement the Municipality shall by reason of the construction of public facilities, traffic conditions, public safety or street vacation, or the Municipality shall lawfully elect to alter or change the grade of any street, alley or public way, requiring the moving or relocation of any of the facilities of the Company, the Company, upon reasonable notice by the Municipality, shall remove and relocate its wires, cables, underground conduits and other fixtures at its own expense.

(D) If the company seeks to construct and maintain its electronic communications system within public or private property, and an easement for such use has already been granted to a telephone company, electric or other public utility, said easement shall be interpreted so as to grant the Company the same rights and privileges as have been granted to the telephone company and electric or other public utility. In such easements the words "telephone" or "telephone company," "electric company," "public utility" and the like shall be interpreted to provide equal access by the Company. The Company shall not be required to construct its facilities and provide service to areas where required easements are not reasonably obtainable.

Section 5. Codes. All construction of the Company, including installation and maintenance of its transmission and distribution system, shall be in accordance with the provisions of the National Electrical Safety Code, the Statutes of the State of Illinois and all applicable ordinances of the Municipality. The Company shall provide the Municipality's Authorized Agent with a map designating the location of its transmission and distribution facilities prior to construction.

Section 6. Assignment. The Company shall not sell, lease or transfer its plant or system to another or transfer or assign any rights under this Agreement to another, except upon 30 day written notice to the governing body of the Municipality and no such sale or transfer shall be effective until the vendee, assignee or lease has filed in the Office of the Municipal Clerk a statement duly executed reciting the fact of such sale, assignment or lease accepting the terms of the Agreement and agreeing to perform all the conditions thereof. Upon receipt of said notice from the Company, the Municipality reserves the right within the 30 day period to exercise its authority as provided by federal law in these matters. However, nothing in this Agreement shall prevent the company from assigning this Agreement as security collateral for the purpose of obtaining financing.

Section 7. Indemnification and Insurance. The Company shall indemnify and hold the Municipality harmless from any and all liability, damage or expense arising from accidental or negligent damage either to itself or other persons or property of others which may occur by the reasons of the Company's activities and shall provide the following:

(A) The Company shall at all times during the term of this Agreement maintain in full force and effect and at its own expense, a general comprehensive liability insurance policy in protection of the Company, the Municipality and their respective officers, employees and agents against any liability for loss or damage resulting in personal injury, death or property damage occasioned by the operation of the Company acting under this Agreement. The minimum liability limits of such policy shall be \$500,000 for personal injury or death of any one person; \$1,000,000 for personal injury or death of two or more persons in any one occurrence; and \$500,000 for damage to property resulting from any one occurrence. Certification that such insurance in full force and effect shall be filed by the Company with the Municipal Clerk prior to the initial construction of the Company's system. Such certification shall also include a provision that written notice of cancellation or reduction in limits of said insurance shall be delivered to the Municipality at least 20 days in advance of the effective date.

Section 8. Rates and Charges. The Company shall lay all cables, wires and lines both on the public and private properties of the Municipality at its own expense, but the Company shall have the right of charging its customers both an installation fee to bring the service to their properties and a monthly fee for their continued use of the service.

To the extent that Federal or State Law or regulation may now, or as the same may hereafter be amended to, authorize the City/County to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the Franchisee, the County shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City/County. If and when exercising rate regulation, the County shall abide by the terms and conditions set forth by the FCC.

Section 9. Subscriber Contracts. No contract as to the length of service for a regular monthly residential subscriber shall be required by the Company under ordinary circumstances. The Company agrees that under ordinary circumstances it shall be the right of the subscriber to start or terminate his service, and by reasonable notice to the Company to terminate the service. It is hereby acknowledged, however, that any equipment installed by the Company in behalf of the subscriber on his premise shall remain the property of the Company, and shall be subject to reasonable inspection and service by the Company at reasonable hours and removal upon termination of service.

In the event that any subscriber shall fail to meet his obligations according to the approved rate schedule and to meet reasonable Company rules and regulations, the Company shall have the right to terminate or withhold services to such subscriber. Otherwise, the service rendered by the Company shall be available to all routes of the Company. Such extended routes shall be determined by the Company.

Section 10. Payment to Municipality. The Company shall pay to the Municipality for the privilege of operating its system within the corporate limits of the Municipality as now exists or hereinafter constituted an annual fee that shall be equal to three percent (3%) of the total annual gross subscriber receipts received from within the Municipality. Payments shall be made semi-annually within 45 days following the last date of the sixth and twelfth months of the calendar year. Such payments shall be credited against any business and occupation tax or franchise tax or other Municipality tax except personal property taxes required to be paid by the Company.

The Municipality, upon prior notification, shall have the right to inspect, at all reasonable times, the records of the Company for the purpose of ascertaining accurately what the actual gross subscriber receipts of the Company for Cable television service in the Municipality has been for the present or past five years.

Section 11. System and Service. The Company shall install an electronic communications system capable of carrying a minimum of 20 channels of video signals designed for color transmission which can be modified for two-way services as the technology and marketplace requirements permit.

Section 12. Safety Conditions. The Municipality reserves the general right to see that the system of the Company is constructed and maintained in a safe condition. In the event the Municipality shall find that an unsafe condition does exist, it may order the Company to make necessary repairs forthwith, and if the Company shall fail to do so, the Municipality may cause said repairs to be made and collect all cost therefrom from the Company.

Section 13. Required Licenses; Certification. Within sixty (60) days after its acceptance of this Agreement, the Company shall proceed with due diligence to obtain all the necessary certificates, permits, licenses and authorizations which are necessary and required for the conduct of its business.

Section 14. Term of Agreement; Extension of Term. The Agreement and rights herein shall take effect and be in force from and after the final passage hereof as required by law and upon the filing of the acceptance by the Company of this Agreement with the Municipal Clerk and shall continue in force and effect for the term of twenty (20) years from and after said effective date. The Company is further granted an option to extend said term for a period of ten (10) years, provided notice of such intent is served in writing upon the Municipality at least six (6) months prior to the expiration of the primary term of twenty (20) years and such extension is approved by the Municipality.

Section 15. Default and Forfeiture. In the event the Company shall fail or refuse to observe the terms and provisions of this Agreement, the Municipality shall be entitled to cancel

and terminate this Agreement and all rights thereunder; provided, however, the Municipality shall serve upon the Company written notice of such violations and the Company shall thereupon correct such violations or show cause why such violations should or cannot be corrected no less than ninety (90) days from and after the date of receipt of said notice. In the event the Company fails to correct such violations, this Agreement shall thereupon be voidable by the Municipality, but all rights accruing to the Municipality against the Company shall continue in favor of the Municipality.

Section 16. FCC Rules. Any modification of the rules and regulations of the FCC shall be incorporated into this Agreement within one (1) year of its effective date.

Section 17. Amendments. The provisions of this Agreement are compatible with THE EXISTING LAWS OF THE UNITED STATES, State of Illinois and regulations of the FCC. In the event of any amendment, modification or supplemental legislation or regulation which changes the limitations now imposed by such law or regulations, other than as provided in Section 16 hereof, this Agreement shall, upon written notice of either the Municipality or Company to the other, be amended and changed in accordance with such amendment, modification or supplement.

Section 18. Separability. If any section, subsection, sentence, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate and distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof.

Section 19. Municipality does hereby give and grant unto Company, its successors and assigns, the nonexclusive right and privilege, permission, authority and franchise for constructing, erecting, developing, keeping, holding, operating and maintaining a cable television system and to install, lay, clear, trench for and for such other purposes as may be necessary and incidental thereto, and recalling in, over and along present and future streets, alleys, stotted, including all annexations to the Municipality and the inhabitants thereof; even though the same may cross the streets, sidewalk, public lands and highways of the Municipality, and to use the same for the purpose of transmitting and distributing electrical impulses, television signals for television purposes, to reproduce pictures and sound in combination or independently, and especially for the conduct of a cable television system for the reception, sale and distribution of television signals.

Section 20. This Agreement is made under and in conformity with the laws of the State of Illinois and the Municipality and shall take effect and be in force as herein provided.