

**TITLE 5
STREETS AND PUBLIC PROPERTY**

**CHAPTER 1
STREETS AND PUBLIC WAYS**

5-1-1: OBSTRUCTING AND ENCROACHING PUBLIC WAYS:

- A. No person shall place or permit to be placed in any street or public place any obstruction, encumbrance or encroachment of any kind whatsoever, and no person shall neglect or refuse to remove the same after having been notified to do so by any Village officer or official; provided, that any person loading or discharging merchandise or household goods at a dwelling house or any place of business in the Village shall have a reasonable time, not exceeding two (2) hours, within which to effect the same.
- B. No person shall erect or cause to be erected, to retain or cause to be retained any encroachment within any roadway right of way or within the Illinois Route 171 right-of-way lines. (Ord. 2014-O-04)
- C. Encroachment is defined as any building, fence, sign or any other structure or object of any kind (with the exception of utilities and public road signs), which is placed, located or maintained in, on, under or over any portion of the project right of way or the roadway right of way. (Ord. 82-0-11, 5-13-82)

5-1-2: INJURIOUS MATERIALS ON STREETS:

No person shall throw, cast or put into, drop or leave in any street, alley, lane, public place or any unenclosed public grounds in the Village any stone, missiles, nails, ice, glass, iron or any other metal, or any straw, paper, parings of fruit or vegetables, or any other article or thing.

5-1-3: DAMAGE TO PUBLIC PROPERTY:

- A. Removal of Public Property: It shall be unlawful for any person to remove any material belonging to any street, alley, lane or public area.
- B. Street Lights: No person shall break, mutilate or obstruct any of the street lights in the Village. If convicted of a violation of this subsection, such person shall be liable for the cost of repairing or replacing said street light.
- C. Street Signs: No person shall break, misplace or carry away any of the street signs now or hereafter to be placed on any of the streets in the Village. (Ord., 2-11-1897; amd. 1983 Code)

5-1-4: EXCAVATIONS:

No person shall excavate or dig in any of the streets or alleys unless authorized by the President of the Board of Trustees, and any excavations shall be protected and shall have a red light at night showing where such excavations are.

5-1-5: STREET AND ALLEY WIDTHS:

All streets to be hereafter laid out, platted or opened shall be sixty feet (60') wide, and all alleys to be hereafter laid out, platted or opened shall be of a width of not less than twenty feet (20'); provided, that the Village Board may, in its discretion, grant permission to lay out or plat streets and alleys of a greater or lesser width. (Ord., 2-11-1897)

**CHAPTER 2
DRIVEWAYS**

5-2-1: DEFINITIONS:

DRIVEWAY: A place on private property for the operation of automobiles and other vehicles.

DRIVEWAY APPROACH: An area between the traveled roadway of a public street right of way and private property intended to provide access for vehicles from the roadway of a public street to private property. Such approach must provide access to something definite on private property such as a driveway, a parking area, or a door at least eight feet (8') wide, intended and used for the entrance of vehicles.

5-2-2: PERMIT PROVISIONS:

A. Required Permits:

1. Construction Permit: It shall be unlawful to construct any curb or driveway approach or break out or remove any curb without first securing a permit from the President and Board of Trustees.

2. Parkway Use Permit: The use of parkways shall be subject to the issuance of a permit for that purpose and shall also be subject to an annual use license as hereinafter provided.

B. Fees Required:

1. Residence Driveway: The fee for the issuance of permits and inspection of driveway approaches to private residences shall be seventy five dollars (\$75.00).

2. Nonresidential Driveway: The fee for the issuance of permits and inspection of driveway approaches to nonresidential properties and parkway use permits shall be one dollar (\$1.00) per foot of width as measured at the property line.

3. Parkway use licenses shall be subject to an annual license fee of one dollar (\$1.00) per foot of width as measured at the property line.

5-2-3: BOND REQUIRED:

The applicant for a driveway approach to a commercial or industrial property or a parkway use permit shall also file with the Village a continuing bond in the penal sum of two thousand dollars (\$2,000.00) executed by the applicant and a surety company, conditioned for the faithful observance of this Chapter and which shall indemnify and save harmless the Village from any and all damages, judgments, costs or expenses which the Village may incur or suffer by reason of the granting of said permit.

5-2-4: LOCATION REGULATIONS:

No driveway approach shall interfere with Municipal or public utility facilities such as poles, traffic signals, sign posts, catch basins, fire hydrants, crosswalks, or other street structures. Driveway approaches shall be located so as to avoid parkway trees; no parkway trees shall be removed without the approval of the President and Board of Trustees.

5-2-5: CONSTRUCTION REGULATIONS:

A. Restrictions, Placement:

No driveway approach shall be constructed or used so as to impede the flow of surface water in the street gutter or a drainage ditch.

No driveway approach to residential properties shall be constructed or used for the sole purpose as a parking space.

Driveway approaches to nonresidential property shall not be used for parking space if the parked vehicles protrude into the street so as to impede the flow of traffic or extend over the sidewalk so as to interfere with the movement of pedestrians.

B. Parking Restrictions: Non-driveway parkway areas may be used for parking space subject to the following conditions:

1. Parked vehicles shall not protrude into the street so as to impede the flow of traffic or extend over the sidewalk so as to interfere with the movement of pedestrians.

2. The parkway area shall be paved with an approved dustproof surface, i.e., six inch (6") concrete or two inch (2") Class I-II asphalt or equivalent.

3. There shall be a curb provided between the sidewalk and the parking area located to insure that no part of the parked cars shall extend over the sidewalk so as to interfere with the movement of pedestrians.

C. Required Standards: Driveway approaches shall be constructed to the following standards:

1. Surface: All driveway approaches which give access to an improved street with curb and gutters shall be surfaced with a permanent dustproof surface; either concrete, bituminous concrete, asphalt, brick, or other material approved by the Village.

2. Widths: The total width of driveways measured at the property line on a parcel of property used for residential purposes shall not exceed one-third (1/3) the lot frontage and no single driveway shall exceed twenty feet (20') measured at the property line. The total width of driveways measured at the property line on a parcel of property used for nonresidential purposes shall not exceed one-half (1/2) the lot frontage, and no single driveway approach shall exceed thirty feet (30') measured at the property line. The width of the driveway approach measured at the curb shall in no case be greater than five feet (5') more than the width measured at the property line.

3. Location of Driveway: On a parcel of property used for residential purposes, a driveway shall not be located closer than one foot (1') from the property line and no driveway approach shall extend over the property line extended to the curb except that the flare may extend not more than two feet (2') beyond the property line extended. On a parcel of property used for nonresidential purposes, no driveway approach shall be located within five feet (5') of the property line or within ten feet (10') of any other driveway approach as measured at the property line.

4. Sidewalk Grade: Where an existing sidewalk is more than eighteen inches (18") above grade of the street as measured at the gutter line, the President and Board of Trustees may permit the sidewalk to be lowered across and adjacent to the driveway approach. In lowering the walk, no steps shall be permitted and the maximum sidewalk grade permitted shall be ten percent (10%). (Ord. 67-3-6, 1967)

CHAPTER 3 TREES AND PLANTS

5-3-1: DEFINITIONS:

The following words and phrases, when used in this chapter, shall have the meaning respectively ascribed to them in this section:

MUNICIPAL PROPERTY: Any parking lot, parkway, right-of-way or other property under the control or jurisdiction of the village.

PUBLIC HIGHWAY: Any land lying between any private property line and any public streets, roadways and alleys.

TREES, SHRUBS AND PLANTS: All vegetation, woody or otherwise, except lawn grass and flowers less than 24 inches in height.

5-3-2: PLANTING OF TREES:

Any person who may wish to plant trees for shade or ornamental purposes on any public highways or municipal property of this Village may be permitted to do so, provided they first obtain a written permit therefor from the building commissioner. The application for such permit shall designate the location and the species of the trees, shrubs or plants to be planted and the method proposed to be followed. The building commissioner shall have the authority to refuse the granting of such permit when such planting is likely to create a public danger or nuisance or be detrimental to the growth of adjacent trees.

5-3-3: AUTHORITY OF THE PUBLIC WORKS DIRECTOR:

- A. Generally: The public works director shall have the authority to plant, maintain and control all trees, shrubs and plants planted or to be planted on the public highways and municipal property.
- B. Removal of Trees: It shall be the duty of the public works director to remove or cause to be removed all trees, shrubs or plants, planted upon the public highways and municipal property when, in his judgment, such removal shall be beneficial to the peace, health and safety of the public and public improvements, or where such trees, shrubs or plants are detrimental to the growth of the adjacent trees.

5-3-4: PROTECTION OF TREES AND PLANTS:

No person shall prune, cut, molest, break, deface, destroy, spray, repair or do surgery work on any such tree or part thereof or in any manner interfere with, disturb or injure any tree, shrub or plant upon the public highways or municipal property; nor shall any chemical be used for the control of insects, or any other diseases or for any other reason; nor shall any person permit any chemical, either solid or fluid, to seep, drain or be emptied on or about any tree, shrub or plant that is now or may hereafter be growing upon a public highway or municipal property, without first obtaining a permit from the building commissioner.

5-3-5: PUBLIC NUISANCES:

- A. The following are declared to be public nuisances under this chapter:
 - 1. Any dead or dying tree, shrub or other plan, wherever located;

2. Any otherwise unhealthy tree, shrub or other plant, wherever located, which harbors any insects or diseases which reasonably may be expected to injure or harm any tree, shrub or other plant;
 3. Any tree, shrub, other plant, or portion thereof, wherever located, which by reason of location or condition constitutes an imminent danger to the health, safety or welfare of the general public;
 4. Any tree, shrub or other plant or portion thereof wherever located, which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light;
 5. Any tree, shrub or other plant or portion thereof wherever located, which dangerously obstructs the view of any street, drive-way or other means of traffic ingress and egress.
- B. Right to Inspect. The officers, agents and employees of the village have the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected of being a public nuisance.
- C. Abatement. It shall be the responsibility of the owner of any property, on which a public nuisance is located, to remove said nuisance within seven (7) days of being notified by the village. If any property owner fails to remove such nuisance within the specified time period, the village may remove (or cause to be removed) the nuisance. The cost of such abatement shall be filed as a lien against the property on which the nuisance was located.

5-3-6: PROHIBITED ACTS:

- A. Interference: No person shall unreasonably hinder, prevent, delay or interfere with any officer, agent or employee of the village while engaged in the execution or enforcement of this chapter.
- B. Excavations Near Trees: No person shall excavate any ditches, tunnels or trenches, within a radius of ten feet (10') from any tree, shrub or plant that is now or may hereafter be, growing upon any public highway or municipal property, without first obtaining a written permit from the building commissioner. (Ord 2019-O-03, 2-14-2019)

**CHAPTER 4
CABLE TELEVISION**

5-4-1: TITLE:

This Chapter shall be known and may be cited as the "Cable TV Franchise".

5-4-2: DEFINITIONS:

For the purpose of this Chapter, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below.

COMMUNITY TELEVISION STATION: Channel 12 or such other channel as may be designated by grantee for the delivery of selected local programming including "Extra Help", an interactive tutorial service for junior and senior high school students.

FEDERAL COMMUNICATIONS COMMISSION or FCC: The present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency legally created.

GRANTEE: Cablevision of Chicago, its successors or assigns.

GROSS SUBSCRIBER REVENUES: Shall include any and all compensation or receipts derived by grantee from the operation within the Village of the cable television system authorized herein, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by grantee.

PERSON: An individual, firm, partnership, association, corporation, company or organization of any kind.

REGULAR SUBSCRIBER SERVICES: At a minimum shall include the carriage of broadcast signals and non-broadcast services mandated by the FCC, together with the community television station, but shall not include "ancillary" or "auxiliary" services or programming, such as, without limitation, programming supplied on a per program or per channel charge basis or security alarm services of any other interactive service which may become available and offered by grantee in the future.

VILLAGE: The Village of Willow Springs, a Municipal corporation under the laws of the State of Illinois.

VILLAGE COUNCIL: The Village Council of the Village of Willow Springs or its designated representative.

5-4-3: GRANT OF AUTHORITY:

There is hereby granted by the Village to grantee the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, easements, public ways, and public places now laid out or dedicated and all extensions thereof and additional thereto in the Village, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the Village of a cable television system for the transmission

of television signals and other signals either separately or upon or in conjunction with any public utility maintaining the same in the Village with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, easements and public grounds and places in the Village to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes herein set forth shall not be exclusive and the Village reserves the right to grant a similar use of said street, alleys, easements, public ways and places to any person at any time during the period of this franchise; provided that nothing contained herein shall be deemed to require the granting of additional CATV franchises if, in the opinion of the Village Council, it is in the public interest to restrict such franchise to one or more.

5-4-4: INDEMNIFICATION:

Grantee shall save the Village harmless from all loss sustained by the Village on account of any suit, judgment, execution, claim or demand whatsoever against the Village resulting from negligence on the part of the grantee in the construction, operation or maintenance of its cable television system in the Village; and for this purpose, grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Illinois. The amounts of such insurance to be carried for liability due to property damage shall be three hundred thousand dollars (\$300,000.00) as to any one occurrence; and against liability due to injury to or death of persons, one million dollars (\$1,000,000.00) as to any one person and three million dollars (\$3,000,000.00) as to any one occurrence. The Village shall notify grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Village on account of any negligence as aforesaid on the part of grantee. Where any such claim or demand against the Village is made by suit or other legal action, written notice thereof shall be given by the Village to grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the Village, whichever notice yields grantee the larger amount of time within which to prepare an answer. Failure by the Village to properly notify grantee in accordance with the foregoing of any such claim, suit, or demand against the Village shall not release grantee from its obligation to indemnify the Village as provided herein unless the grantee is prejudiced in the defense of said claim or demand.

5-4-5: FRANCHISE FEE:

The grantee shall pay, as compensation to the Village, a fee of three percent (3%) of its gross subscriber revenues per annum. Payment of amounts due shall be made on August 1 for the period of the preceding January 1 through June 30, and on February 1 for the period of the preceding July 1 through December 31.

5-4-6: CONSTRUCTION AND MAINTENANCE:

- A. All structures, lines and equipment erected by grantee within the Village shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and grantee shall comply with all reasonable, proper and lawful ordinances of the Village now or hereafter in force. Existing poles, posts, conduits, and other such structures of any electric power system, telephone company or other public utility located in the Village shall be made available to grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The Village shall actively assist grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits.
- B. In case of any disturbance by grantee of pavement, sidewalk, driveway or other surfacing, grantee shall, at its own cost and expense and in a manner approved by the Village, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.
- C. In the event that any time during the period of this franchise the Village shall lawfully elect to alter or change any street, alley, easement, or other public way requiring the relocation of grantee's facilities, then in such event grantee, upon reasonable notice by the Village, shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, grantee shall not be required to pay the cost.
- D. Grantee shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and grantee shall have the authority to require such payment in advance.
- E. Grantee shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and public places of the Village so as to prevent the branches of such trees from coming into contact with grantee's facilities.
- F. All poles, lines, structures and other facilities of grantee in, on, over and under the streets, sidewalks, alleys, easements and public grounds or places of the Village shall be kept by grantee at all times in a safe and substantial condition.

5-4-7: RATES:

The rates for all programming and services shall be nondiscriminatory; provided that nothing contained herein shall be deemed to prohibit reasonable promotional rates which may, from time to time, be less than the standard rates imposed; and further provided that

grantee may recover its cost of extending service to any new area as part of its installation of equipment charges even if such installation charges for subscribers living in the area which is the subject of the extension of services is greater than the subscribers in areas where service was previously available.

5-4-8: FRANCHISE TERM:

The franchise granted by this Chapter shall be in full force and effect and after acceptance by grantee as provided in Section 5-4-22, and the same shall continue in full force and effect for a term of fifteen (15) years.

5-4-9: RENEWAL PROCEDURE:

Grantee shall have the option to renew the terms and conditions of this franchise for an additional period of fifteen (15) years. Should grantee desire to exercise this option, it shall so notify the Village, in writing, not less than three (3) months prior to the expiration hereof. Said option shall be available, however, only if grantee is not in default of any of the material provisions of this franchise agreement at the time of the exercise of said option.

5-4-10: RESOLUTION OF SUBSCRIBER COMPLAINTS:

- A. Grantee shall maintain an office with telephone service in a place reasonably accessible to residents of the Village, for so long as it continues to operate the system hereunder, and hereby designates such office as the place where all notices, directions, orders and requests may be served or delivered under this franchise. Grantee shall file a notification with the Village whenever such address is changed.
- B. All complaints against grantee relating to its performance under this franchise, including but not limited to those concerning quality of service, equipment malfunctions, and billing disputes, shall be received at the aforesaid office by duly authorized employees. All complaints so received will be turned over to the head of the department to which the complaint relates. The manager of the system shall establish a follow-up procedure for all complaints other than those concerning equipment or system malfunction, so that the resolution of all complaints shall be reviewed weekly.
- C. Regarding complaints of equipment or system malfunction, grantee shall respond to such complaints within twenty four (24) hours after receipt thereof and correct malfunctions as promptly as possible. Grantee shall provide a daily pro rata credit to any subscriber who is without service for any continuous period in excess of twenty four (24) hours due to the fault of grantee.

5-4-11: COMMUNITY, PUBLIC, EDUCATIONAL AND MUNICIPAL CONNECTIONS:

In furtherance of the desire of the Village Council to create a communications system in order to encourage the exchange of information among residents of the Village:

- A. Grantee shall make one aerial connection for the community television station available to the home of every resident of the Village without any monthly service charge. Grantee shall charge a fee not to exceed twenty five dollars (\$25.00) for each aerial connection to the community television station which is located one hundred fifty feet (150') or less from the property line of the resident requesting the service. For aerial connections in excess of one hundred fifty feet (150') or for underground installations, grantee shall charge its actual cost. Such cost will be submitted to the resident, in writing, for his or her approval, before installation is begun.

- B. Grantee shall, without charge for installation or monthly service, make one aerial connection for regular subscriber service, as provided below, into the internal distribution system of each Village office building, police station, fire station, library and school within the Village (hereinafter singly or collectively referred to as the "premises"). Grantee shall make a connection at one outlet in each such premises for the purpose of enabling the said premises to distribute the regular subscriber service. Where such premises consist of more than one building, only one tie-in and connection shall be made.
 1. Grantee shall make such tie-in and connection at the location designated by the appropriate official as the location of the "head-end" of the internal distribution system of the premises. The responsibility of grantee shall terminate when the tie-in and connection to the internal distribution system is completed, and the responsibility for performance of the transmissions throughout such system shall be solely that of the premises. Grantee makes no representation or warranty as to the ability of such distribution system to carry the programs transmitted over its cable system, however, grantee will offer, without charge, technical consulting services to the premises in order to make the internal system work effectively for the purposes intended herein.

 2. The procedure for making such connections shall be as follows: Connections will be made at the time when grantee is serving the area within which the premises are located. At such time, grantee shall send written notification of the provisions of this paragraph to such premises. Thereafter, upon written request from the recipient official, grantee will make the above described tie-in and connection to the internal distribution system of such premises. When grantee is serving the area but the building on the premises to be connected with an aerial installation is located more than five hundred feet (500') from the nearest CATV cable, the cost of the aerial cable installation beyond five hundred feet (500') will be paid by the premises. For underground installations, grantee shall charge the recipient its actual cost. Such cost will be submitted to said premises, in writing, before installation is begun. All such premises will be connected according to the orderly progress and construction of the system.

5-4-12: PUBLIC, EDUCATIONAL AND MUNICIPAL ACCESS:

A. Grantee shall provide and maintain, without charge, an access channel for each of the following purposes:

1. At least one specially designated, noncommercial public access channel available on a first come, nondiscriminatory basis;
2. At least one specially designated channel for local educational authorities;
3. At least one specially designated channel for local government uses;
4. At least one specially designated channel for leased access uses;

B. Until such time as there is demand for each channel full time for its designated use, public, educational, government and leased access channel programming may be combined on one or more composite access channels. Grantee may utilize any time not otherwise used on such access channels for its own programming.

5-4-13: INTERFACE OF CATV COMPANIES:

Subject to the applicable rules and regulations of the FCC, in the event that more than one franchise is issued within, or immediately adjacent to the Village, and if such operating systems are contiguous and technically compatible with grantee, and have allocated access channels, grantee shall provide suitable interconnection facilities for one access channel at the boundary of its service areas. Grantee shall not be required to interconnect at any point beyond any area where it has trunk or feeder service.

5-4-14: STUDIO FACILITY:

Grantee shall establish and maintain a studio for local programming, consisting of at least two (2) view finder cameras, switcher fader controls, audio system, lighting system, film chain, two (2) video tape recorders and multiplexing unit. All equipment shall be remotely controlled from a master control unit. This facility shall be available to the Village, its agencies, public service organizations and schools lying wholly or partly within the Village. The studio facility shall be provided as soon as reasonably practicable but in no event later than two (2) years from the date of registration of this franchise with the FCC.

5-4-15: GOVERNMENTAL APPROVALS:

Grantee shall register this franchise with the FCC within sixty (60) days of the effective date hereof.

5-4-16: EQUAL OPPORTUNITY EMPLOYER:

Grantee hereby agrees that it will not refuse to hire or employ, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms,

conditions or privileges of employment, because of age, race, creed, color, national origin or sex.

5-4-17: EXERCISE OF REASONABLE POLICE POWER:

Nothing contained herein shall in any way be deemed to limit the right of the Village to adopt, in addition to the provisions of this franchise and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its reasonable police power, provided, however, that such regulations are reasonable and do not materially conflict with the terms and conditions of this franchise.

5-4-18: RIGHT TO INSPECT BOOKS:

Grantee hereby grants to the Village the right to inspect all its books, records, strand maps, plans, financial statements and other similar materials of grantee, insofar as they relate to the terms and conditions of this franchise and the performance of the obligations hereunder, upon reasonable notice to grantee and during normal business hours.

5-4-19: REGULATING OFFICE OF VILLAGE:

The office or officer of the Village that bears the primary responsibility for the continuing administration of the terms and conditions of this franchise is the President or his designee.

5-4-20: FORFEITURE:

If grantee should violate any of the terms, conditions or provisions of this franchise, or if grantee should fail to comply with any reasonable provisions of any ordinance of the Village regulating the use by grantee of the streets, alleys, easements or public ways of the Village, and should grantee further continue to violate or fail to comply with the same for a period of thirty (30) days after grantee shall have been notified in writing by the Village to cease and desist from any such violation or failure to comply, then grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided that such forfeiture shall be declared only by written decision of the Village Board after an appropriate public proceeding before the Village Board affording grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the Village Board may, in its discretion and upon a finding of violation or failure to comply; impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon grantee, it shall be afforded a period of twelve (12) months within which to sell, transfer or convey this cable television system to a qualified purchaser at fair market value. During this twelve (12) month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, grantee shall have

the right to operate the cable television system pursuant to the provisions of this franchise.

5-4-21: TRANSFERS:

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the Village and the successors and assigns of grantee. Any transfer by grantee shall become effective upon receipt by the Village of written notice from grantee advising Village of the transfer and the name and address of the transferee and the receipt by Village of a statement in writing from the transferee agreeing to be bound and abide by all of the obligations, duties and liabilities as well as the rights and privileges created by this franchise.

5-4-22: ACCEPTANCE:

The franchise granted by this Chapter shall become effective when accepted by grantee and shall then be and become a valid and binding contract between the Village and grantee; provided that this franchise shall be void unless grantee shall, within ninety (90) days after the final passage of this Chapter, file with the Village Clerk of the Village a written acceptance of the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Chapter.

5-4-23: UNLAWFUL ACTS:

- A. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over grantee's cable system without payment to grantee or its lessee.
- B. It shall be unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over grantee's cable system.
- C. It shall be a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for a term not to exceed six (6) months, or both, for any person who violates any of the provisions of this Section.

5-4-24: SEVERABILITY:

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any Federal or State court or administration or governmental agency of competent jurisdiction, specifically including the Federal

Communications Commission, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

5-4-25: AUTOMATIC AMENDMENTS:

Upon written notification to grantee by the Village, the franchise granted herein shall be deemed automatically amended to include any more favorable terms or conditions of any other franchise granted by a municipality within Cook County, Illinois, to grantee, except where such more favorable terms or conditions are due to the larger number of street miles or the greater number of housing units contained in such municipality.

5-4-26: EFFECTIVE DATE:

This Chapter shall become effective immediately. The effective date of the franchise granted herein shall be the date upon which the written acceptance provided for in Section 5-4-22 is received by the Village Clerk.

5-4-27: SCHEDULE OF RATES ADOPTED BY REFERENCE:

A schedule of grantee's original rates are hereby adopted by reference and made a part of this Chapter. Grantee shall not increase the rate schedule without prior Village approval until two (2) years from the passage of this Chapter. (Ord. 79-23, 9-27-79)

CHAPTER 5: STANDARDS FOR CONSTRUCTION OF FACILITIES IN THE RIGHTS-OF-WAY

5-5-1 Purpose and Scope.

- A) Purpose. The purpose of this Article is to establish policies and procedures for constructing facilities on rights-of-way within the Village's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Village rights-of-way and the Village as a whole.
- B) Intent. In enacting this Article, the Village intends to exercise its authority over the rights-of-way in the Village and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by utility facilities, including without limitation:
 - 1) prevent interference with the use of streets, sidewalks, bicycle paths, alleys, parkways and other public ways and places;
 - 2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

- 3) prevent interference with the facilities and operations of the Village's utilities and of other utilities lawfully located in rights-of-way or public property;
- 4) protect against environmental damage, including but not limited to damage to trees, from the installation of utility facilities;
- 5) protect against increased storm water run-off due to structures and materials that increase impermeable surfaces;
- 6) preserve the character of the neighborhoods in which facilities are installed;
- 7) preserve open space, particularly the tree-lined parkways that characterize the Village's residential neighborhoods;
- 8) prevent visual blight from the proliferation of facilities in the rights-of-way; and
- 9) assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.

C) Facilities Subject to This Article. This Article applies to all facilities on, over, above, along, upon, under, across, or within the rights-of-way within the jurisdiction of the Village. A facility lawfully established prior to the effective date of this Article may continue to be maintained, repaired and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license or similar agreement.

D.) Franchises, Licenses, or Similar Agreements. The Village, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the Village's rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the Village enter into such an agreement. In such an agreement, the Village may provide for terms and conditions inconsistent with this Article.

E.) Effect of Franchises, Licenses, or Similar Agreements.

1.) Utilities Other Than Telecommunications Providers. In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the Village, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

2) Telecommunications Providers. In the event of any conflict with, or inconsistency between, the provisions of this Article and the provisions of any franchise, license or similar agreement between the Village and any

telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

F.) Conflicts with 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. In all cases the more restrictive requirement shall apply.

G.) 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 utility shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

H.) Sound Engineering Judgment. The Village shall use sound engineering judgment when administering this Article and may vary the standards, conditions, and requirements expressed in this Article when the Village so determines. Nothing herein shall be construed to limit the ability of the Village to regulate its rights-of-way for the protection of the public health, safety and welfare.

5-5-2 Definitions.

As used in this Article and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this Section. Any term not defined in this Section shall have the meaning ascribed to it in 92 III. Adm. Code § 530,30, unless the context clearly requires otherwise.

"PASHTO" - American Association of State Highway and Transportation Officials.

"ANSI" - American National Standards Institute.

"Applicant" - A person applying for a permit under this Article. "ASTM" - American Society for Testing and Materials.

"Backfill" - The methods or materials for replacing excavated material in a trench or pit.

"Bore" or "Boring" - To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

"Cable operator" - That term as defined in 47 U.S.C. 522(5).

"Cable service" - That term as defined in 47 U.S.C. 522(6).

"Cable system" - That term as defined in 47 U.S.C. 522(7).

"Carrier Pipe" - The pipe enclosing the liquid, gas or slurry to be transported.

"Casing" - A structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors, and fiber optic devices.

"Village" - The Village of Willow Springs, Cook County, Illinois.

"Clear Zone" - The total roadside border area, starting at the edge of the pavement, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. Distances are specified in the PASHTO Roadside Design Guide.

"Coating" - Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

"Code" or "Village Code" - Municipal Code of Willow Springs, Illinois. "Conductor" - Wire carrying electrical current.

"Conduit" - A casing or encasement for wires or cables.

"Construction" or "Construct" The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.

"Cover" The depth of earth or backfill over buried utility pipe or conductor.

"Crossing Facility" - A facility that crosses one or more right-of-way lines of a right-of-way.

"Village Designee" - The Building Commissioner or his designee.

"Disrupt the Right-of-Way" For the purposes of this Article, any work that obstructs the right-of-way or causes a material adverse effect on the use of the right-of-way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

"Emergency" - Any immediate maintenance to the facility required for the safety of the public using or in the vicinity of the right-of-way or immediate maintenance required for the health and safety of the general public served by the utility.

"Encasement" - Provision of a protective casing.

"Engineer" - The Village Engineer or his or her designee.

"Equipment" - Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.

"Excavation" The making of a hole or cavity by removing material, or laying bare by digging.

"Extra Heavy Pipe" Pipe meeting ASTM standards for this pipe designation.

"Facility" - All structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights-of-way under this Article. For purposes of this Article, the term "facility" shall not include any facility owned or operated by the Village.

"Freestanding Facility" - A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, or meter station.

"Frontage Road" - Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access on highway.

"Hazardous Materials" - Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Village to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.

"Highway Code" The Illinois Highway Code, 605 ILCS 5/1-101 et seq., as amended from time to time.

"Highway" - A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. "Highway" includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

"Holder" - A person or entity that has received authorization to offer or provide cable or video service from the ICC pursuant to the Illinois Cable and Video Competition Law, 220 ILCS 5/21-401.

"IDOT" - Illinois Department of Transportation. "ICC" - Illinois Commerce Commission.

"Jacking" - Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

"Jetting" - Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

"Joint Use" The use of pole lines, trenches or other facilities by two or more utilities.

"J.U.L.I.E." - The Joint Utility Locating Information for Excavators utility notification program.

"Major Intersection" - The intersection of two or more major arterial highways.

"Occupancy" - The presence of facilities on, over or under right-of-way.

"Parallel Facility" - A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

"Parkway" Any portion of the right-of-way not improved by street or sidewalk.

"Pavement Cut" The removal of an area of pavement for access to facility or for the construction of a facility.

"Permittee" - That entity to which a permit has been issued pursuant to this Article.

"Practicable" - That which is performable, feasible or possible, rather than that which is simply convenient.

"Pressure" - The internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

"Petroleum Products Pipelines" - Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry.

"Prompt" That which is done within a period of time specified by the Village. If no time period is specified, the period shall be 30 calendar days.

"Public Entity" - A legal entity that constitutes or is part of the government, whether at local, state or federal level.

"Restoration" - The repair of a right-of-way, easement, highway, roadway, or other area disrupted by the construction of a facility.

"Right-of-Way" or "Rights-of-Way" - Any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility and/or drainage easements, in which the Village has the right and authority to authorize, regulate or permit the location of facilities other than those of the Village. "Right-of-Way" or "Rights-of-Way" shall not include any real or personal

Village property that is not specifically described in the previous two sentences and shall not include Village buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the right-of-way.

"Roadway" - That part of the highway that includes the pavement and shoulders.

"Sale of Telecommunications at Retail" - The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

"Security Fund" - That amount of security as required in this Article.

"Shoulder" A width of roadway, adjacent to the pavement, providing lateral support to the pavement edge and providing an area for emergency vehicular stops and storage of snow removed from the pavement.

"Sound Engineering Judgment" A decision(s) consistent with generally accepted engineering principles, practices and experience.

"Telecommunications" - This term includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, mobile radio services, cellular mobile telecommunications services, stationary two-way radio, paging service and any other form of mobile or portable one-way or two-way communications, and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. "Private line" means a dedicated non-traffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel, or a group of such channels, from one or more specified locations to one or more other specified locations.

"Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end-to-end communications.

"Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.F.R. §76.1500 and following), as now or hereafter amended.

"Telecommunications Provider" Means any person that installs, owns, operates or controls facilities in the public right-of-way used or designed to be used to transmit telecommunications in any form.

"Telecommunications Retailer" - Means and includes every person engaged in making sales of telecommunications at retail as defined herein.

"Trench" - A relatively narrow open excavation for the installation of an underground facility.

"Utility" - The individual or entity owning or operating any facility as defined in this Article.

"Vent" - A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

"Video Service" - That term as defined in Section 21-201 (v) of the Illinois Cable and Video Competition Law of 2007, 200 ILCS 21-201(v).

"Water Lines" - Pipelines carrying raw or potable water.

"Wet Boring" Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

5-5-3 Annual Registration Required.

Every utility that occupies right-of-way within the Village shall register on January 1 of each year with the Village, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a 24-hour telephone number for each such person, and evidence of insurance as required in this Article , in the form of a certificate of insurance.

5-5-4 Permit Required; Applications and Fees.

A) Permit Required. No person shall construct (as defined in this Article) any facility on, over, above, along, upon, under, across, or within any Village right-of-way which (1) changes the location of the facility, (2) adds a new facility, (3) disrupts the right-of-way (as defined in this Article), or (4) materially increases the amount of area or space occupied by the facility on, over, above, along, under, across or within the right-of-way, without first filing an application with the Village, Designee and obtaining a permit from the Village therefor, except as otherwise provided in this Article. No permit shall be required for installation and maintenance of service

connections to customers' premises where there will be no disruption of the right-of-way.

B) Permit Application. All applications for permits pursuant to this Article shall be filed on a form provided by the Village and shall be filed in such number of duplicate copies as the Village may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

C) Minimum General Application Requirements. The application shall be made by the utility or its duly authorized representative and shall contain, at a minimum, the following:

- 1) The utility's name and address and telephone and telecopy numbers;
- 2) The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, and its interest in the work;
- 3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application;
- 4) A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
- 5) Evidence that the utility has placed on file with the Village:
 - i) A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the latest edition of the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - ii) An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the Village and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes

compliance with this Section unless the Village finds that additional information or assurances are needed;

- 6) Drawings and specifications showing the work proposed, including the certification of an Illinois registered professional engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations.
- 7) Evidence of insurance as required in this Article;
- 8) Evidence of posting of the security fund as required in this Article;
- 9) Any request for a variance from one or more provisions of this Article (See Section entitled "Variances"; and
- 10) Such additional information as may be reasonably required by the Village,

D) Supplemental Application Requirements for Specific Types of Utilities. In addition to the requirements of Subsection c) of this Section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

- 1) In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any "Certificate of Public Convenience and Necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;
- 2) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;
- 3) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;
- 4) In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and/or other local or state entities with jurisdiction, have been satisfied; or
- 5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.

E) Applicant's Duty to Update Information. Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the Village within thirty (30) calendar days after the change necessitating the amendment.

F) Application Fees. Unless otherwise provided by franchise, license, or similar agreement, \$1,000.00 or such amount established by the Village, as supplemented and amended from time to time. No application fee is required to be paid by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.

5-5-5 Action on Permit Applications.

A) Village Review of Permit Applications. Completed permit applications, containing all required documentation, shall be examined by the Village Designee within a reasonable time after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the Village Designee shall reject such application in writing, stating the reasons therefor. If the Village Designee is satisfied that the proposed work conforms to the requirements of this Article and applicable ordinances, codes, laws, rules, and regulations, the Village Designee shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the Village Designee, that the construction proposed under the application shall be in full compliance with the requirements of this Article.

B) Additional Village Review of Applications of Telecommunications Retailers.

1) Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the Village that it intends to commence work governed by this Article for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the Village not less than ten (10) calendar days prior to the commencement of work requiring no excavation and not less than thirty (30) calendar days prior to the commencement of work requiring excavation. The Village Designee shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.

2) In the event that the Village Designee fails to provide such specification of location to the telecommunications retailer within either (i) ten (10) calendar days after service of notice to the Village by the telecommunications retailer in the case of work not involving excavation for new construction or (ii) twenty-

five (25) calendar days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this Article.

3) Upon the provision of such specification by the Village, where a permit is required for work pursuant to this Article, the telecommunications retailer shall submit to the Village an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Subsection (a) of this Section.

C) Additional Village Review of Applications of Holders of State Authorization Under the Cable and Video Competition Law of 2007. Applications by a utility that is a holder of a State-issued authorization under the Cable and Video Competition Law of 2007 shall be deemed granted forty-five (45) calendar days after submission to the Village, unless otherwise acted upon by the Village, provided the holder has complied with applicable Village codes, ordinances, and regulations.

5-5-6 Effect of Permit.

A) Authority Granted; No Property Right or Other Interest Created. A permit from the Village authorizes a permittee to undertake only certain activities in accordance with this Article on Village rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights-of-way.

B) Duration. No permit issued under this Article shall be valid for a period longer than six (6) months unless construction is actually begun within that period and is thereafter diligently pursued to completion.

C) Pre-construction meeting required. No construction shall begin pursuant to a permit issued under this Article prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the Village Designee with such Village representatives in attendance as the Village deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction, and access and egress by adjacent property owners.

D) Compliance with All Laws Required. The issuance of a permit by the Village does not excuse the permittee from complying with other requirements of the Village and applicable statutes, laws, ordinances, rules, and regulations.

5-5-7 Revised Permit Drawings.

In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of "as-built" drawings or plans to the Village within ninety (90) calendar days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. If any deviation from the permit also deviates from the requirements of this Article, it shall be treated as a request for variance as defined in this Article. If the Village denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

5-5-8 Insurance.

A) Required Coverages and Limits. Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility in the right-of-way shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the Village, and its elected and appointed officers, officials, consultants, agents, and employees as additional insureds on the policies listed in paragraphs 1 and 2 below:

1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X," "C," and "U" coverages) and products-completed operations coverage with limits not less than:

i) Five million dollars (\$5,000,000) for bodily injury or death to each person;

ii) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and

iii) Five million dollars (\$5,000,000) for all other types of liability;

2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000) for personal injury and property damage for, each accident;

3) Worker's compensation with statutory limits; and

4) Employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per employee and per accident. If the utility is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this Section.

- B) Excess or Umbrella Policies. The coverages required by this Section may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- C) Copies Required. The utility shall provide copies of any of the policies required by this Section to the Village within ten (10) calendar days following receipt of a written request therefor from the Village.

- D) Maintenance and Renewal of Required Coverages. The insurance policies required by this Section shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) calendar days after receipt by the Village, by registered mail or certified mail, return receipt requested, of a written notice addressed to the Village Building Commissioner of such intent to cancel or not to renew."

Within ten (10) calendar days after receipt by the Village of said notice, and in no event later than ten (10) calendar days prior to said cancellation, the utility shall obtain and furnish to the Village evidence of replacement insurance policies meeting the requirements of this Section.

- E) Self-Insurance. A utility may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection a) of this Section. A utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under Subsection a), or the requirements of Subsections b), c) and d) of this Section. A utility that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under Subsection a) of this Section, such as evidence that the utility is a "private self insurer" under the Workers Compensation Act.
- F) Effect of Insurance and Self-Insurance on Utility's Liability. The legal liability of the utility to the Village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.
- G) Insurance Companies. All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct

business with the licensee in the State of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.

5-5-9 Indemnification.

By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the Village and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the utility or its affiliates, officers, employees, consultants, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of-way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this Article or by a franchise, license, or similar agreement; provided, however, that the utility's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this Article by the Village, its officials, officers, employees, agents or representatives.

5-5-10 Security.

A) Purpose. The permittee shall establish a Security Fund in a form and in an amount as set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the permittee's sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:

- 1) The faithful performance by the permittee of all the requirements of this Article.
- 2) Any expenditure, damage, or loss incurred by the Village occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the Village issued pursuant to this Article.
- 3) The payment by permittee of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or non-performance by permittee in violation of this Article including, without limitation, any damage to public property or restoration work the permittee is required by this Article to perform that the Village must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other

payments due the Village from the permittee pursuant to this Article or any other applicable law.

- B) Form. The permittee shall provide the Security Fund to the Village in the form, at the permittee's election, of cash, or an unconditional letter of credit in a form acceptable to the Village. Any letter of credit provided pursuant to this Subsection shall, at a minimum:
- 1) Provide that it will not be canceled without prior notice to the Village and the permittee;
 - 2) Not require the consent of the permittee prior to the collection by the Village of any amounts covered by it; and
 - 3) Shall provide a location convenient to the Village and within the State of Illinois at which it can be drawn.
- C) Amount. The dollar amount of the Security Fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the Village Designee, and may also include reasonable, directly related costs that the Village estimates are likely to be incurred if the permittee fails to perform such restoration. The reasonably estimated cost as described above shall be multiplied by 105% to establish the Security Fund amount. Such costs shall include, when applicable, the cost of street repair or replacement, sidewalk repair or replacement, landscaping, the cost to repair or replace such other improvements as may exist on the premises prior to construction performed pursuant to the permit and, if necessary, an appropriate reserve to guarantee that landscaping shall survive a one year period after restoration and to assure that all restoration is completed in a workmanlike manner. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the Village with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Village Designee may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this Subsection (c) for any single phase.
- D) Withdrawals. The Village, upon fourteen (14) calendar days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this Subsection, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the Village for such amount within the fourteen (14) day notice period. Withdrawals may be made if the permittee:

- 1) Fails to make any payment required to be made by the permittee hereunder;
 - 2) Fails to pay any liens relating to the facilities that are due and unpaid;
 - 3) Fails to reimburse the Village for any damages, claims, costs or expenses which the Village has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
 - 4) Fails to comply with any provision of this Article that the Village determines can be remedied by an expenditure of an amount in the Security Fund.
- E) Replenishment. Within fourteen (14) calendar days after receipt of written notice from the Village that any-amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in Subsection c) of this Section.
- F) Interest. The permittee may request that any and all interest accrued on the amount in the Security Fund be returned to the permittee by the Village, upon written request for said withdrawal to the Village, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in Subsection c) of this Section.
- G) Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the Village for failure by the permittee to comply with any provisions of this Article or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the Village to the extent necessary to cover any reasonable costs, loss or damage incurred by the Village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.
- H) Rights Not Limited. The rights reserved to the Village with respect to the Security Fund are in addition to all other rights of the Village, whether reserved by this Article or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the Village may have. Notwithstanding the foregoing, the Village shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

5-5-11 Permit Suspension and Revocation.

- A) Village Right to Revoke Permit. The Village may revoke or suspend a permit issued pursuant to this Article for one or more of the following reasons:
- 1) Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;

- 2) Non-compliance with this Article;
 - 3) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; or
 - 4) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.
- B) Notice of Revocation or Suspension. The Village shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Article stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this Section.
- C) Permittee Alternatives Upon Receipt of Notice of Revocation or Suspension. Upon receipt of a written notice of revocation or suspension from the Village, the permittee shall have the following options:
- 1) Immediately provide the Village with evidence that no cause exists for the revocation or suspension;
 - 2) Immediately correct, to the satisfaction of the Village, the deficiencies stated in the written notice, providing written proof of such correction to the Village within five (5) working days after receipt of the written notice of revocation; or
 - 3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction of the Village providing written proof of such removal to the Village within ten (10) calendar days after receipt of the written notice of revocation. The Village may, in its discretion, for good cause shown, extend the time periods provided in this Subsection.
- D) Stop Work Order. In addition to the issuance of a notice of revocation or suspension, the Village may issue a stop work order immediately upon discovery of any of the reasons for revocation set forth within Subsection a) of this Section.
- E) Failure or Refusal of the Permittee to Comply. If the permittee fails to comply with the provisions of Subsection c) of this Section, the Village or its designee may, at the option of the Village: (1) correct the deficiencies; (2) upon not less than twenty (20) calendar days notice to the permittee, remove the subject facilities or equipment; or (3) after not less than thirty (30) calendar days notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the Village. The permittee shall be liable in all events to the Village for all costs of removal.

5-5-12 Change of Ownership or Owner's Identity or Legal Status.

- A) Notification of Change. A utility shall notify the Village no less than thirty (30) calendar days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the utility. The new owner of the utility or the facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and applicable laws, ordinances, rules and regulations, including this Article, with respect to the work and facilities in the right-of-way.
- B) Amended Permit. A new owner shall request that any current permit be amended to show current ownership within 30 calendar days of assuming ownership responsibilities. If the new owner fails to have a new or amended permit issued in its name within said 30 day period, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the Village's right-of-way.
- C) Insurance and Bonding. All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

5-5-13 General Construction Standards.

- A) Standards and Principles. All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications, as amended from time to time:
 - 1) Standard Specifications for Road and Bridge Construction;
 - 2) Supplemental Specifications and Recurring Special Provisions;
 - 3) Highway Design Manual;
 - 4) Highway Standards Manual;
 - 5) Standard Specifications for Traffic Control Items;
 - 6) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code § 545);
 - 7) Flagger's Handbook; and
 - 8) Work Site Protection Manual for Daylight Maintenance Operations.

B) Interpretation of Municipal Standards and Principles. If a discrepancy exists between or among differing principles and standards required by this Article, the Village Designee shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final. If requested, the Village Designee shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

5-5-14 Traffic Control.

- A) Minimum Requirements. The Village's minimum requirements for traffic protection are contained in IDOT's Illinois Manual on Uniform Traffic Control Devices and this Code.
- B) Warning Signs, Protective Devices, and Flaggers. The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting applicable federal, state, and local requirements for protection of the public and the utility's workers when performing any work on the rights-of-way.
- C) Interference with Traffic. All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.
- D) Notice When Access is Blocked. At least forty-eight (48) hours prior to beginning work that will partially or completely block access to any residence, business or institution, the utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to this Article, the utility shall provide such notice as is practicable under the circumstances.
- E) Compliance. The utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the utility's attention by the Village.

5-5-15 Location of Facilities.

- A. General Requirements. In addition to location requirements applicable to specific types of utility facilities, all utility facilities, regardless of type, shall be subject to the general location requirements of this subsection.
- 1) No Interference with Village Facilities. No utility facilities shall be placed in any location if the Village Designee determines that the proposed location will require the relocation or displacement of any of the Village's utility facilities or will otherwise interfere with the operation or maintenance of any of the Village's utility facilities.
 - 2) Minimum Interference and Impact. The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause

only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said right-of-way.

3) No Interference with Travel. No utility facility shall be placed in any location that interferes with the usual travel on such right-of-way.

4) No Limitations on Visibility. No utility facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.

5) Size of Utility Facilities. The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application. No signage shall be included except that which is mandated by applicable state statute or regulation and which is submitted to the Village Designee for prior approval as to size, color, location and compliance with the applicable statute or regulation.

B) Parallel Facilities Located Within Highways.

1) Overhead Parallel Facilities. An overhead parallel facility may be located within the right-of-way lines of a highway only if it exists as an overhead utility prior to the adoption of this Article and if the following criteria are met:

i) Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;

ii) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (0.6 m) behind the face of the curb, where available;

iii) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;

iv) No pole is located in the ditch line of a highway; and

v) Any ground-mounted appurtenance is located within one foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.

2) Underground Parallel Facilities. An underground parallel facility may be located within the right-of-way lines of a highway only if:

i) The facility is located as near the right-of-way line as practicable and not more than eight (8) feet (2.4 m) from and parallel to the right-of-way line;

ii) A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and

iii) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five (5) feet (1.5 m) from the right-of-way line and any above-grounded appurtenance shall be located within one foot (0.3 m) of the right-of-way line or as near as practicable.

C) Facilities Crossing Highways.

1.) No Future Disruption. The construction and design of crossing facilities installed between the ditch lines or curb lines of Village highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

2) Cattle Passes, Culverts, or Drainage Facilities. Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.

3) 90 Degree Crossing Required. Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline as practicable.

4) Overhead Power or Communication Facility. An overhead power or communication facility may cross a highway only if it exists as an overhead utility prior to the adoption of this Article and if the following criteria are met:

i) It has a minimum vertical line clearance as required by ICC's rules entitled, "Construction of Electric Power and Communication Lines" (83 III. Adm. Code 305);

ii) Poles are located within one foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and

iii) Overhead crossings at major intersections are avoided.

5) Underground Power or Communication Facility. An underground power or communication facility may cross a highway only if:

i) The design materials and construction methods will provide maximum maintenance-free service life; and

ii) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.

6) Markers. The Village may require the utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a highway. Each marker shall identify the type of facility, the utility, and an emergency phone number. Markers may also be eliminated as provided in current Federal regulations. (49 C.F.R. §192.707 (1989)).

D) Facilities to be Located Within Particular Rights-of-Way. The Village may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

E) Freestanding Facilities.

1) The Village may restrict the location and size of any freestanding facility located within a right-of-way.

2) The Village may require any freestanding facility located within a right-of-way to be screened from view by use of landscaping or other appropriate methods.

F) Facilities Installed Above Ground. Above ground facilities may be installed only if:

1) No other existing facilities in the area are located underground;

2) New underground installation is not technically feasible and the permittee establishes to the satisfaction of the Village that compliance requiring the installation of utilities and similar facilities be installed underground is not technically feasible; and

3) The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged.

4) Prior to any above ground installation the permittee establishes to the satisfaction of the Village that (i) installation of the proposed above ground facility is the only installation method feasible for the purpose to be served by the facility and, (ii) there is no other substitute location available where an underground installation capable of serving the same purpose as the above ground installation is feasible.

G) Facility Attachments to Bridges or Roadway Structures.

1) Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted.

2) A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:

i) The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;

ii) The type, length, value, and relative importance of the highway structure in the transportation system;

iii) The alternative routings available to the utility and their comparative practicability;

iv) The proposed method of attachment;

v) The ability of the structure to bear the increased load of the proposed facility;

vi) The degree of interference with bridge maintenance and painting;

vii) The effect on the visual quality of the structure; and

viii) The public benefit expected from the utility service as compared to the risk involved.

H) Appearance Standards.

1) The Village may prohibit the installation of facilities in particular locations in order to preserve visual quality.

2) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the right-of-way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed.

5-5-16 Construction Methods and Materials.

A) Standards and Requirements for Particular Types of Construction Methods.

1) Boring or Jacking. All work shall be done in accordance with the applicable articles of Section 552 of the IDOT Standard Specifications for Road and Bridge Construction.

i) Pits and Shoring, Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the Village Designee from the edge of the pavement. Pits for boring or jacking shall be excavated no more than 48 hours in advance of boring or jacking operations and backfilled within 48 hours after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.

ii) Directional Boring. Directional Boring is required except in those circumstances when it is demonstrated to the satisfaction of the Village that it is not technically feasible.

iii) Wet Boring or Jetting. Wet boring or jetting shall not be permitted under the roadway.

iv) Borings with Diameters Greater Than 6 Inches. Borings over six inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch (25 mm), unless otherwise approved in advance by the Village Engineer.

v) Borings with Diameters 6 Inches or Less. Borings of six inches or less in diameter may be accomplished by either directional drilling, jacking, guided with auger, or auger and following pipe method.

iv) Tree Preservation. Any facility located within the drip line of any tree designated by the Village to be preserved or protected shall be bored under or around the root system.

2) Trenching. Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 603 of IDOT's "Standard Specifications for Road and Bridge Construction."

i) Length. The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half

of any intersection may have an open trench at any time unless special permission is obtained from the Village Designee.

ii) Open Trench and Excavated Material. Open trench and windrowed excavated material shall be protected as required by Chapter 6 of the Illinois Manual on Uniform Traffic Control Devices. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.

iii) Drip Line of Trees. The utility shall not trench within the drip line of any tree designated by the Village to be preserved.

3) Backfilling.

i) Any pit, trench, or excavation created during the installation of facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's "Standard Specifications for Road and Bridge Construction." When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

ii) For a period of three years from the date construction of a facility is completed, the utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the Village Designee, the utility, at its expense, shall within 10 calendar days of such order remove any pavement and backfill material to the top of the installed facility, place and properly compact new backfill material, and restore new pavement, sidewalk, curbs, and driveways to the proper grades, as determined by the Village Designee.

4) Pavement Cuts. Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth herein is permitted under this Article, the following requirements shall apply:

i) Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Village Engineer.

ii) Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the Village.

iii) All saw cuts shall be full depth.

iv) For all rights-of-way which have been reconstructed with a concrete surface/base in the last seven (7) years, or resurfaced in the last three (3) years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

5) Encasement.

i) Casing pipe shall be designed to withstand the load of the highway and any other superimposed loads. The casing shall be continuous either by one-piece fabrication or by welding or jointed installation approved by the Village.

ii) The venting, if any, of any encasement shall extend within one foot (0.3 m) of the right-of-way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the highway.

iii) In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or Village approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the Village. Bell and spigot type pipe shall be encased regardless of installation method.

iv) In the case of gas pipelines of 60 psig or less, encasement may be eliminated.

v) In the case of gas pipelines or petroleum products pipelines with installations of more than 60 psig, encasement may be eliminated only if: (1) extra heavy pipe is used that precludes future maintenance or repair and (2) cathodic protection of the pipe is provided;

vi) If encasement is eliminated for a gas or petroleum products pipeline, the facility shall be located so as to provide that construction does not disrupt the right-of-way.

6) Minimum Cover of Underground Facilities. Cover shall be provided and maintained at least in the amount specified in the following table for minimum cover for the type of facility:

TYPE OF FACILITY	MINIMUM COVER
Electric Lines	30 Inches (0.8 m)
Communication, Cable or Video Service Lines	18 to 24 Inches (0.6 m, as determined by Village)*
Gas or Petroleum Products	30 Inches (0.8 m)
Water Line	60 Inches (1.6 m)
Sanitary Sewer, Storm Sewer, or Drainage Line	48 Inches (1.3 m)

*Minimum cover for facilities crossing under streets shall be as determined by the Village Engineer.

B) Standards and Requirements for Particular Types of Facilities.

1) Electric Power or Communication Lines.

i) Code Compliance, Electric power or communications facilities within Village rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 III. Adm. Code Part 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled "Rules for Construction of Electric Power and Communications Lines," and the National Electrical Safety Code.

ii) Overhead Facilities. If permitted per this Article, overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed. Variances may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.

iii) Underground Facilities. (1) Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads. (2) If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if: (a) the crossing is installed by the use of "moles," "whip augers," or other approved method which compress the earth to make the opening for cable installation or (b) the installation is by the open trench method which is only permitted prior to roadway construction. (3) Cable shall be grounded in accordance with the National Electrical Safety Code.

iv) Burial of Drops. All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the Village. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten (10) business calendar days after placement.

2) Underground Facilities Other than Electric Power or Communication Lines, Underground facilities other than electric power or communication lines may be installed by:

i) the use of "moles," "whip augers," or other approved methods which compress the earth to move the opening for the pipe;

ii) jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;

iii) open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or

iv) tunneling with vented encasement, but only if installation is not possible by other means.

3) Gas Transmission, Distribution and Service. Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a Village approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR §192), IDOT's "Standard Specifications for Road and Bridge Construction," and all other applicable laws, rules, and regulations.

4) Petroleum Products Pipelines. Petroleum products pipelines within rights-of-way shall conform to the applicable sections of ANSI Standard Code for Pressure Piping. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).

5) Waterlines, Sanitary Sewer Lines, Storm Water Sewer Lines or Drainage Lines. Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current "Standard Specifications for Water and Sewer Main Construction in Illinois."

6) Ground Mounted Appurtenances. Ground mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending one foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the Village Designee. With the approval of the Village Designee

shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

C) Materials.

1) General Standards. The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT's "Standards Specifications for Road and Bridge Construction," the requirements of the Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.

2) Material Storage on Right-of-Way. No material shall be stored on the right-of-way without the prior written approval of the Village Designee. When such storage is permitted, all pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the right-of-way and other property. If material is to be stored on right-of-way, prior approval must be obtained from the Village.

3) Hazardous Materials. The plans submitted by the utility to the Village shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

D) Operational Restrictions.

1) Construction operations on rights-of-way may, at the discretion of the Village, be required to be discontinued when such operations would create hazards to traffic or the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.

2) These restrictions may be waived by the Village Designee when emergency work is required to restore vital utility services.

3) Unless otherwise permitted by the Village, the hours of construction are those set forth in the Code.

E) Location of Existing Facilities. Any utility proposing to construct facilities in the Village shall contact J.U.L.I.E. and ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The Village will make its permit records available to a utility for

the purpose of identifying possible facilities. When notified of an excavation or when requested by the Village or by J.U.L.I.E., a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act (220 ILCS 50/1 et seq.)

5-5-17 Vegetation Control.

- A) Electric Utilities. Compliance with State Laws and Regulations. An electric utility shall conduct all tree-trimming and vegetation control activities in the right-of-way in accordance with applicable Illinois laws and regulations and additionally, with such local franchise or other agreement with the Village as permitted by law.

- B) Other Utilities. Tree Trimming Permit Required. Tree trimming that is done by any other utility with facilities in the right-of-way and that is not performed pursuant to applicable Illinois laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of a permit in addition to any other permit required under this Article.
 - 1) Application for Tree Trimming Permit. Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

 - 2) Damage to Trees. Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages. The Village will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The Village may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.

- C) Specimen Trees or Trees of Special Significance. The Village may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

- D) Chemical Use.
 - 1) Except as provided in the following paragraph, no utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the Village for any purpose, including the control of growth, insects or disease.

2) Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the utility demonstrates to the satisfaction of the Village Designee that such spraying is the only practicable method of vegetation control.

5-5-18 Removal, Relocation, or Modifications of Utility Facilities.

- A) Notice. Within ninety (90) calendar days following written notice from the Village, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any utility facilities within the rights-of-way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Village improvement in or upon, or the operations of the Village in or upon, the rights-of-way.
- B) Removal of Unauthorized Facilities. Within thirty (30) calendar days following written notice from the Village, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:
- 1) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;
 - 2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;
 - 3) If the facility was constructed or installed without prior issuance of a required permit in violation of this Article; or
 - 4) If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.
- C) Emergency Removal or Relocation of Facilities. The Village retains the right and privilege to cut or move any facilities located within the rights-of-way of the Village, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Village shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.
- D) Abandonment of Facilities. Upon abandonment of a facility within the rights-of-way of the Village, the utility shall notify the Village within ninety (90) calendar days. Following receipt of such notice the Village may direct the utility to remove all or any portion of the facility if the Village Designee determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the Village does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the Village, the abandoning utility shall be deemed to

consent to the alteration or removal of all or any portion of the facility by another utility or person.

5-5-19 Clean-up and Restoration.

The utility shall remove all excess material and restore all turf and terrain and other property within ten (10) calendar days after any portion of the rights-of-way are disturbed, damaged or destroyed due to construction or maintenance by the utility, all to the satisfaction of the Village. This includes restoration of entrances and side roads. Restoration of roadway surfaces, sidewalks, bicycle trails, landscaping and tree replacement shall be made using materials, vegetation, trees and methods approved by the Village Designee. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, removal of all flags and markers or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this Section may be extended by the Village Designee for good cause shown.

5-5-20 Maintenance and Emergency Maintenance.

- A) General. Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the utility in a manner satisfactory to the Village and at the utility's expense.
- B) Emergency Maintenance Procedures. Emergencies may justify non-compliance with normal procedures for securing a permit:

- 1) If an emergency creates a hazard on the traveled portion of the right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the highway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of equipment required in repair operations, adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.

- 2) In an emergency, the utility shall, as soon as possible, notify the Village Designee or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the law enforcement agency providing police services for the Village shall be notified immediately.

3) In an emergency, the utility shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.

C) Emergency Repairs. The utility must file in writing with the Village a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair. Restoration and Clean-up shall be performed in accordance with the requirements of this Article.

5-5-21 Variances.

A) Request for Variance. A utility requesting a variance from one or more of the provisions of this Article must do so in writing to the Village Designee as a part of the permit application. The request shall identify each provision of this Article from which a variance is requested and the reasons why a variance should be granted.

B) Authority to Grant Variances. The Village Designee shall decide whether a variance is authorized for each provision of this Article identified in the variance request on an individual basis.

C) Conditions for Granting of Variance. The Village Designee may authorize a variance only if the utility requesting the variance has demonstrated that:

1) One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and

2) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

D) Additional Conditions for Granting of a Variance. As a condition for authorizing a variance, the Village Designee may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Article but which carry out the purposes of this Article.

E) Right to Appeal. Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the Village Designee under the provisions of this Article shall have the right to appeal to the Board of Trustees, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the Village Clerk within 30 calendar days after the date of such order, requirement, decision or determination. The Village Board may commence its consideration of the appeal at its next regularly scheduled meeting occurring at least

seven (7) calendar days after the filing of the appeal. The Village Board shall timely decide the appeal.

5-5-22 Penalties.

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article, or who fails or refuses to remedy a violation of any of the provisions of this Article after being notified by the Village Designee of such a violation, shall be subject to a fine of Seven Hundred Fifty and 00/100 (\$750.00) Dollars for each offense. Each day upon which such violation exists shall constitute a separate offense subject to a separate fine. Nothing herein contained shall prevent the Village from pursuing such other lawful action as is necessary for the restraint, correction and abatement of any violation. There may be times when the Village will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this Article. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the Village's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the Village. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

5-5-23 Enforcement.

Nothing in this Article shall be construed as limiting any additional or further remedies that the Village may have for enforcement of this Article, as from time to time supplemented and amended. (Ord. 2008-O-23)

CHAPTER 6: SERVICE PROVIDER AND PEG FEES

5-6-1 Definitions.

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

- A) "Cable service" means that term as defined in 47 U.S.C. § 522(6).
- B) "Commission" means the Illinois Commerce Commission.
- C) "Gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the Village.

1) Gross revenues shall include the following:

- i) Recurring charges for cable or video service.
- ii) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
- iii) Rental of set top boxes and other cable service or video service equipment.
- iv) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
- v) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
- vi) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
- vii) A pro rata portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
- viii) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (ix).
- ix) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- x) The service provider fee permitted by 220 ILCS 5/21-801 (b).

2) Gross revenues do not include any of the following:

i) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).

ii) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.

iii) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or nonvideo service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.

iv) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.

v) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a village, state, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.

vi) Security deposits collected from subscribers.

vii) Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.

3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

D) "Holder" means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

- E) "PEG" means public, education and governmental.
- F) "PEG access support fee" means the amount paid under this Article and 220 ILCS 5/21-801 by the holder to a Village for the service areas within its territorial jurisdiction
- F) "Service" means the provision of "cable service" or "video service" to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.
- G) "Service provider fee" means the amount paid under this Article and 220 ILCS 5/21-801 by the holder to a Village for the service areas within its territorial jurisdiction.
- H) "Video service" means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

5-6-2 Cable and Video Service Provider Fee Imposed.

- A) Fee Imposed. A fee is hereby imposed on any holder providing cable service or video service in the Village.
- B) Amount of Fee. The amount of the fee imposed hereby shall be five percent (5%) of the holder's gross revenues.
- C) Notice to the Village. The holder shall notify the Village at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the Village.
- D) Holder's Liability. The holder shall be liable for and pay the service provider fee to the Village. The holder's liability for the fee shall commence on the first day of the calendar month following thirty (30) days after receipt of the ordinance adopting this Article by the holder. The ordinance shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the Village.
- E) Payment Date. The payment of the service provider fee shall be due on a quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

- F) Exemption. The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the Village in which a fee is paid.
- G) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under this Article.

5-6-3 PEG Access Support Fee Imposed.

- A) PEG Fee Imposed. A PEG access support fee is hereby imposed on any holder providing cable service or video service in the Village in addition to the fee imposed pursuant to 5-6-2.
- B) Amount of Fee. The amount of the PEG access support fee imposed hereby shall be one percent (1 %) of the holder's gross revenues or, if greater, the percentage of gross revenues that incumbent cable operators pay to the Village or its designee for PEG access support in the Village.
- C) Payment. The holder shall pay the PEG access support fee to the Village or to the entity designated by the Village to manage PEG access. The holder's liability for the PEG access support fee shall commence on the date set forth in Section 5-6-2 (d).
- D) Payment Due. The payment of the PEG access support fee shall be due on a quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.
- E) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been terminated pursuant to that section. All payments made by an incumbent cable operator pursuant to the previous sentence may be credited against the fees that operator owes under section 5-6-2 (b).

5-6-4 Applicable Principles.

All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

5-6-5 No Impact on Other Taxes Due from Holder.

Nothing contained in this Article shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service.

A State-issued authorization shall not affect any requirement of the holder with respect to payment of the Village's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

5-6-6 Audits of Cable and Video Service Provider.

A) Audit Requirement. The Village will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit of its books and records. The holder shall comply with the same requirements the Village imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to recompute any amounts determined to be payable under the requirements of the Village. If all local franchises between the Village and cable operator terminate, the audit requirements shall be those adopted by the Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 et seq. No acceptance of amounts remitted should be construed as an accord that the amounts are correct.

B) Additional Payments. Any additional amount due after an audit shall be paid within thirty (30) days after the Village's submission of an invoice for the sum.

5-6-7 Late Fees and Payments.

All fees due and payments which are past due shall be governed by ordinances adopted by the Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 et seq. (Ord. 2008-O-05)

CHAPTER 7: CABLE AND VIDEO CUSTOMER PROTECTION LAW

5-7-1 Customer Service and Privacy Protection Law.

A) Adoption. The regulations of 220 ILCS 5/70-501 are hereby adopted by reference and made applicable to the cable or video providers offering services within the Village's boundaries.

B) Amendments. Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Article shall be incorporated into this Article by reference and shall be applicable to cable or video providers offering services within the Village. However, any amendment that makes its provisions optional for adoption by the Village shall not be incorporated into this Article by reference without formal action by the corporate authorities of the Village.

5-7-2 Enforcement.

The Village does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law with respect to complaints received from residents within the Village.

5-7-3 Penalties.

The Village, pursuant to 220 ILCS 5/70-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed \$750.00 for each day of the material breach, and shall not exceed \$25,000.00 for each occurrence of a material breach per customer.

- A) Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the law.
- B) The Village shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least 30 days from the receipt of the notice to remedy the specified material breach.
- C) A material breach, for the purposes of assuming penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (B).

5-7-4 Customer Credits.

The Village hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 5/70-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit. (Ord. 2008-O-04)

CHAPTER 8: REGULATION OF AND APPLICATION FOR SMALL WIRELESS FACILITIES

5-8-1: Purpose and Scope.

Purpose. The purpose of this Ordinance 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.

Conflicts with Other Ordinances. This Ordinance supersedes all Ordinances or parts of

Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

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

5-8-2: Definitions.

For the purposes of this Ordinance, 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, and the Village of Willow Springs Code.

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

Application – 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.

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 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 – a federal or State statute, common law, code, rule, regulation, order, or Village local ordinance or resolution.

Micro wireless facility – a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 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 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 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 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: (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 – 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.

5-8-3. Regulation of Small Wireless Facilities.

Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in paragraph (9) regarding Height Exceptions or Variances, but 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.

- A. 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;
 - 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;
 - c. 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;
 - 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.
 - 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. A copy of the Village's application form is attached hereto as Exhibit A.
 - 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 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 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 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 Ordinance.

- 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 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 105 days after the submission of a completed application. The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 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 Ordinance.

- d. The Village shall deny an application which does not meet the requirements of this Ordinance.

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 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 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 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 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 applicant must notify the Village in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application 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 wireless equipment associated with the small wireless facility.

- e. Pole Attachment Agreement. Within 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, provided by the Village for the initial collocation on a municipal utility pole by the 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 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 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 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 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 Ordinance.

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.

B. 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 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 Ordinance. The wireless provider 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.

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. 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 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.

5. The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety. All wireless providers, including their designees and subcontractors, shall comply with all Village requirements. The Village shall have the right to reserve, maintain and enforce public safety space as designated by the Village from time to time.
6. The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a Village

ordinance, written policy adopted by the Village, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.

7. The wireless provider shall work with the Village to minimize visual clutter. This includes, but is not limited to, alternate pole and ground equipment placement, use of decorative or stealth poles, and other reasonable means of concealing or limiting the visual impact of small wireless equipment. This requirement shall apply in all zones within the Village, but particularly in residential zones and for historical districts or landmarks.
8. 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 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 describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

9. Height Limitations. The maximum height of a small wireless facility shall be no more than 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. 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 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 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or

- b. 45 feet above ground level.
10. 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 special use permit in conformance with procedures, terms and conditions set forth Section 9A-2-1 of the Willow Springs Village Code.
 11. 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.
 12. 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.
 13. Undergrounding Regulations. The wireless provider shall comply with 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.
 14. Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 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 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the Village grants an extension in writing to the applicant.

C. Application Fees. Application fees are imposed as follows:

1. Applicant shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350 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 \$1,000 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 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection 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 in compliance with 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.

D. Exceptions to Applicability. Nothing in this Ordinance 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 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; or

3. property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, 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, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance 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 16-108.5 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 Ordinance 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 Ordinance.

- E. Pre-Existing Agreements.** Existing agreements between the Village and wireless providers that relate to the collocation 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 July 1, 2018, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village before July 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after July 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the Village on the effective date of the Act may accept the rates, fees and terms that the Village makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the Village that it opts to accept such rates, fees and terms. 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 exercises its option under this paragraph.

- F. 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) \$200 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 \$200 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.

G. Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 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 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.

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.

5-8-4: Dispute Resolution.

The Circuit Court of Cook 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 \$200 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

5-8-5: 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 Ordinance and 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.

5-8-6: Insurance.

The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (i) property insurance for its property's replacement cost against all risks;
- (ii) workers' compensation insurance, as required by the Village;

OR

(iii) 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.