



Town of Garrett Park

Incorporated 1898

To: Mayor and Town Council
From: Barbara B. Matthews, Town Manager
Subject: Adoption – Ordinance No. 2023-4 – Small Wireless Telecommunications Facilities
Date: September 11, 2023

Background

Proposed Ordinance No. 2023-4 would amend Chapter 12 of the Town Code, regarding wireless telecommunication facilities in the public rights-of-way.

In September 2018, the Federal Communications Commission issued an Order (FCC 18-133) imposing limits on what regulations can be enforced by local governments concerning wireless telecommunication infrastructure in public rights-of-way. The Order also sets deadlines, or “shot clocks,” for the processing of deployment applications and sets limits on what application fees can be charged by local governments. The Order was in response to complaints from wireless companies, who argued that local regulations were unduly burdensome. The Order allows local governments to regulate certain things, including aesthetic standards to prevent clutter, but provides that any such regulations generally need to be published in advance. Accordingly, the Town Council adopted Ordinance No. 2019-3 in January 2019, so that there would be published standards “on the books.”

The FCC Chair established a committee in 2017 to create a model ordinance for municipalities to regulate wireless deployment in public rights-of-way. In 2018, the National League of Cities and the National Association of Telecommunications Officers and Advisors created an additional model to better address municipal concerns, based on the FCC committee’s proposal. The Town’s Ordinance is based on that latter model. According to Town Attorney Ron Bolt, nine of his municipal clients in the County adopted the same ordinance, with a few changes here and there.

As was noted at the time of the adoption of Ordinance No. 2019-3, the Town’s ordinance would need to be revisited once national litigation was resolved concerning the Order (including, e.g., litigation unsuccessfully prosecuted by the County concerning the adequacy of the FCC’s radiation standards (dating back to the eighties) and once we knew what regulations, if any, would be adopted by the State and County.

The major litigation efforts have concluded, the State has not preempted local law (despite the industry’s lobbying), and the County has updated its regulations. As a result, it is time to revisit the Town Code provisions.

The County, with ZTA 19-07, streamlined its rules and procedures to conform to the Order. The County generally allows replacement poles to be located in the public rights-of-way if they are 30 feet from homes and no more than 10 feet taller than the replaced pole. Otherwise, conditional use approval must be sought at a hearing. New poles also require conditional use approval. (The County seeks to promote colocation and replacement and avoid the proliferation of new poles.) A table is attached comparing the Town and County rules currently in place.

A Town of Chevy Chase committee recently reviewed that municipality's ordinance and ordinances of other jurisdictions in the United States. The committee made recommendations for edits, which were reviewed by Tim Lay, an attorney who practices telecommunications law. Mr. Lay made several additional edits to the document, which are reflected in proposed Ordinance No. 2023-4.

The Town Council introduced Ordinance No. 2023-4 on July 10, 2023.

Key Provisions of Ordinance No. 2023-4

The significant edits to the existing language in the Town Code are outlined below:

- 1) Reduces the allowable equipment box size from 28 to 12 feet. This is less than the Order allows but conforms to the County's standard. The County explains that it has gotten some pushback from the industry, but that the industry has been finding ways to comply.
- 2) Changes the setback between facilities owned by the same operator from 1,000 to 500 feet. This was recommended by telecommunications counsel, as 1,000 feet may be too much.
- 3) Requires a 2-year deployment plan, so that the Town can assess what is coming down the road.
- 4) Disallows pruning of trees except as minimally reasonably necessary.
- 5) Requires replaced poles to be removed within 180 days.
- 6) Requires noise abatement for cooling fans.
- 7) Requires annual certification concerning whether facilities are still in use.
- 8) Adds a provision for variance requests.

Right-of-Way Access Agreement

The Town Code currently requires a provider to enter into a right-of-way access agreement. This requirement is allowed by the Order. That agreement had not been drafted previously.

The proposed right-of-way access agreement is derived from the City of Gaithersburg's agreement and has been reviewed by Mr. Lay. It addresses such things as insurance, indemnity, repair of damage, inspections, and removal of unneeded equipment. The proposed access agreement also sets forth application fees (see Sections 4.1 and 4.2), which are derived from the fees described as reasonable in the Order.

Follow Up from July 10, 2023 Town Council Meeting

During the Mayor and Town Council's discussion of Ordinance No. 2023-4 on July 10, 2023, several issues arose requiring follow-up on the part of Town staff. These matters are summarized below.

- 1) Councilmember Max requested examples of small wireless telecommunication facilities, which are provided in Attachment 4.
- 2) The definition of a small wireless facility in the ordinance references applicable safety standards under federal law. Councilmember Schulp suggested that this section be amended to recognize evolving federal law. The revised ordinance provided in Attachment 2 incorporates this change.
- 3) Councilmember Schulp requested that Section 6.8, Emergency Contact Information, of the right-of-way access agreement be modified to require quarterly updates. The revised ordinance provided in Attachment 2 incorporates this change.

- 4) Councilmember Schulp recommended that Section 10, Insurance, of the right-of-way access agreement be modified to require that the Town be listed as an additional insured. The revised right-of-way access agreement provided in Attachment 2 incorporates this change.
- 5) Councilmember Bennett inquired whether the ordinance could include a 30-day review period of the design/configuration of the proposed small wireless telecommunication facility. Town Attorney Ron Bolt advised that design standards need to be published in advance per the FCC Order. Any desired design standards could be added to the ordinance or to implementing regulations.
- 6) Councilmember Bennett inquired how many small wireless facilities were needed by a particular telecommunications provider or in general for coverage in the area of Garrett Park. This question would need to be posed to telecommunications counsel Tim Lay (who assisted the Town of Chevy Chase) or another attorney with comparable expertise.

The information provided above was shared via email with the Mayor and Town Council on August 8, 2023. No further assistance from staff was requested.

Recommendation

Staff recommends that the Town Council consider adoption of Ordinance No. 2023-4.

Should the Town Council wish to modify Ordinance No. 2023-4 as introduced to incorporate Item Nos. 2, 3, and 4 resulting from the July 10, 2023 discussion, a motion should be made to amend Ordinance No. 2023-4 as introduced to reflect the changes outlined in Attachment 2. Assuming passage of the motion to amend, the Town Council can then proceed to a motion to adopt Ordinance No. 2023-4 as amended.

Attachments

- Attachment 1 – Ordinance No. 2023-4 and Draft Right-of-Way Access Agreement as introduced on July 10, 2023
- Attachment 2 – Ordinance No. 2023-4 and Draft Right-of-Way Access Agreement as amended based on July 10, 2023 discussion
- Attachment 3 – Table Comparing Current County and Present Town Code Provisions
- Attachment 4 – Photos of Small Wireless Telecommunication Facilities

Ordinance No. 2023-4
Introduced: July 10, 2023
Adoption:
Effective Date:

**TOWN OF GARRETT PARK
ORDINANCE NO. 2023-4**

**SMALL WIRELESS TELECOMMUNICATIONS FACILITIES
(2023 AMENDMENTS)**

AN ORDINANCE TO AMEND CHAPTER 12 OF THE TOWN CODE CONCERNING SMALL WIRELESS TELECOMMUNICATIONS FACILITIES TO CLARIFY PROVISIONS; ADD PERMIT APPLICATION REQUIREMENTS; ADD AND MODIFY STANDARDS FOR DEPLOYMENT; DISALLOW PRUNING OF TREES EXCEPT AS MINIMALLY REASONABLY NECESSARY; REQUIRE REPLACED POLES TO BE REMOVED WITHIN 180 DAYS; REDUCE THE ALLOWABLE EQUIPMENT SIZE FROM 28 TO 12 CUBIC FEET; REQUIRE ANNUAL CERTIFICATION CONCERNING FACILITIES IN USE; AND ADD REQUIREMENTS FOR VARIANCE REQUESTS

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and,

WHEREAS, United States Code, Title 47, Section 332, provides that a local government may exercise control regarding the placement, construction, and modification of personal wireless service facilities, provided the local government does not unreasonably discriminate among providers of functionally equivalent services; and does not prohibit the provision of personal wireless services; and,

WHEREAS, United States Code, Title 47, Section 332, provides that a local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request; and any decision by a local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record; and,

WHEREAS, United States Code, Title 47, Section 1455, provides that a local government may

deny a facility request for a modification of an existing wireless tower or base station if it substantially changes the physical dimensions of such tower or base station, including requests for the collocation, removal, or replacement of transmission equipment; and,

WHEREAS, the Town of Garrett Park holds and maintains the streets and highways within its municipal boundaries in trust for the benefit, use, and convenience of the general public; and,

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary; and,

WHEREAS, Section 400 of the Ordinances of the Town of Garrett Park recognizes that the Town has been designated in the National Register of Historic Places since 1975 and that the Town desires to maintain its historic character consistent with this designation; and,

WHEREAS, Section 717 of the Ordinances of the Town of Garrett Park recognizes the Town's creation of the Garrett Park Arboretum, as specifically defined in Section 717(b)(2) to include "all trees, shrubs, woody plants, and other herbaceous material planted or maintained by the Town on any and all public land owned by the Town"; and,

WHEREAS, Section 715(b) of the Ordinances of the Town of Garrett Park states that "The planting, maintenance and removal of trees in the unpaved street areas dedicated to public use shall be the responsibility of the Council and trees may be planted in or removed from such an area only with the explicit consent of the Council"; and,

WHEREAS, Order 18-133 issued by the Federal Communications Commission, on September 26, 2018, effective January 14, 2019, requires a local government to provide in writing any aesthetic standards that govern the installation of small wireless telecommunications facilities in the public rights-of-way; and the Town adopted Chapter 12 in response thereto, and now amends said Chapter; and,

WHEREAS, after proper notice to the public, the Town Council adopted Ordinance No. 2109-3 in an open meeting conducted on the 14th day of January 2019; and,

WHEREAS, upon consideration of the testimony and evidence presented at the public hearing, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, this _____th day of _____ 2023, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town of Garrett Park Charter, the Town Council does hereby adopt the foregoing Ordinance and amend the Town Code as follows:

* * *

CHAPTER 12

SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

Sec. 120. Intent and Purpose.

It is the intent of the Town Council to promote the Town's public health, safety, and general welfare by providing regulatory requirements for the installation, **operation**, and maintenance of small wireless telecommunications facilities in the public rights-of-way. The purpose of this Chapter is to regulate the same to enhance vehicular and pedestrian safety and avoid interference with motorist and pedestrian sightlines; to protect and minimize damage to trees and plants of the Garrett Park Arboretum; to reduce visual clutter and prevent unsightly or out-of-character deployments consistent with the goals of the Town's National Register of Historic Places designation; to preserve the value of property and the character of the neighborhood; and to otherwise protect the health, safety, and general welfare of the town and its residents, and the public at large.

Sec. 121. Definitions.

"Base Station" means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not include a Tower or any equipment associated with a Tower.

"Collocate" means to install or mount a Small Wireless Facility in the public Right-of-Way on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the application. "Collocation" has a corresponding meaning.

"Communications Facility" means, collectively, the equipment at a fixed location or locations within the public Right-of-Way that enables Wireless Services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

"Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within a public Right-of-Way. The term does not include a Tower or Support Structure.

"Right-of-Way" means any unpaved street area dedicated to public use.

"Small Wireless Facility" means a Wireless Facility that meets all of the following conditions:

- (1) The structure on which antenna facilities are mounted (i) is fifty (50) feet or less in height, including existing antennas, or (ii) is no more than ten (10) percent taller than other adjacent structures, or (iii) is not extended to a height of more than fifty (50) feet or by more than ten (10) percent above its preexisting height, whichever is greater; and
- (2) Each antenna associated with the deployment, excluding the associated equipment **but including any enclosure containing an antenna**, is no more than three (3) cubic feet in volume; and
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than ~~twenty-eight (28)~~ **twelve (12)** cubic feet in volume; and
- (4) The facility does not require antenna structure registration under Federal law; and
- (5) The facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law.

“Support Structure” means a structure in a public Right-of-Way other than a Pole or a Tower, **including a Pole, to which a Wireless Facility is attached, or proposed to be attached** ~~to which a Wireless Facility is attached at the time of the Application.~~

“Tower” means any structure in a public Right-of-Way, within or outside the boundaries of the Town, built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

“Wireless Facility” means the equipment at a fixed location or locations in the public Right-of-Way that enables Wireless Services. A Small Wireless Facility is a type of a Wireless Facility. The term does not include the Pole, Tower, or Support Structure on, under, or within which the equipment is located or collocated, or the coaxial, fiber-optic, or other cabling between Communications Facilities or Poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna. **As used in this Chapter, “Wireless Facility” and “Communications Facility” are synonymous.**

“Wireless Service Provider” or “Provider” means a person who provides Wireless Services.

“Wireless Services” means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. 122. Only Small Wireless Facilities Permitted.

Unless otherwise required by law, no Wireless Facility other than a Small Wireless Facility may be installed or operated in the Rights-of-Way.

Sec. 122 ~~123~~. Permit and Access Agreement Required.

- (a) No person shall construct, install, maintain, or perform any work in the public Right-of-Way related to a Communications Facility, **Support Structure**, or any Tower without first receiving a Permit and paying any applicable fee as required under this Chapter. No permit shall be issued until the applicant has entered into a Right-of-Way Access Agreement in a

form approved by the Town, according to this Chapter. A permit shall not be required for ordinary maintenance and repair, as determined by the Town.

- (b) The Right-of-Way Access Agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the bases for termination; (b) the scope of the authority; (c) the operator's maintenance obligations; (d) the operator's indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) the Town's right to access and inspect the operator's books and records **and facilities located in the Right-of-Way.**
- (c) **A Right-of-Way Access Agreement may be terminated by the Town as set forth in the access agreement, or, in the event this Chapter is amended or replaced and the Town determines, consistent with applicable law, that termination is necessary. In such event, a new permit and Right-of-Way Access Agreement shall be required according to the requirements of the amended or replaced chapter.**

Sec. 423 **124.** Permit Application Requirements.

- (a) An application for a permit under this Chapter must contain or be submitted with the following:
 - (1) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
 - (3) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter;
 - (4) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached;
 - (5) Detailed construction drawings regarding the proposed facility;
 - (6) **A representation as to whether the applicant contends that the application is an eligible facilities request within the meaning of 47 CFR Section 1.6100(b)(3), as amended or replaced, and, if so, drawings and an engineer's certification establishing the accuracy of that contention;**
 - (7) ~~(6)~~ A structural report performed by a duly-licensed engineer evidencing that the Pole, Tower or Support Structure can adequately support the Collocation (or that the Pole, Tower, or Support Structure will be modified to meet structural requirements) in accordance with applicable codes;
 - (8) **A detailed deployment plan describing all Communications Facilities, Poles, Towers, or Support Structures planned to be used or installed by the applicant for twenty-four (24) months following the permit application anywhere in the Town, and a description of any completed deployments within the Town;**

- (9) ~~(7)~~ A certification by a radiofrequency engineer that the Communications Facility will comply with the radiofrequency radiation emission standards adopted by the Federal Communications Commission; and
 - (10) ~~(8)~~ The applicable application fee, bond, Right-of-Way Access Agreement, and Right-of-Way access fee, as may be adopted and amended by resolution of the Town Council.
- (b) The Town may require the posting of a bond to guarantee the prompt and proper restoration of the ~~public~~ Right-of-Way. The bond may be in such amount as the Town Manager deems necessary, ~~in~~ at the Town Manager's discretion **to allow the prompt and proper restoration of the Right-of-Way.**
 - (c) In exchange for the privilege of non-exclusive use of the ~~public~~ Right-of-Way, the applicant shall pay the Town such access and recertification fees as may be established and amended by the Town by resolution from time to time.
 - (d) Any permit issued under this Chapter shall be valid for a period of twelve (12) months after issuance.
 - (e) No work may be performed except in strict accordance with applicable law and the Town permit and all approved plans and specifications.
 - (f) No permit shall be issued except to a Wireless Service Provider with immediate plans for use of the subject Communications Facility. A permit issued under this Chapter may not be assigned or transferred.

Sec. 424 **125.** Standards for Deployment in the ~~Public~~ Right-of-Way.

- (a) *No Interference with Right-of-Way.* No person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the use of the ~~public~~ Right-of-Way by the Town, the general public, or other persons authorized to use or be present in or upon the ~~public~~ Right-of-Way, or otherwise hinder the ability of the Town to improve, modify, relocate, abandon or vacate a ~~public~~ Right-of-Way or any portion thereof. Unless otherwise approved by the Town, any new Tower or Support Structure must not confront a driveway apron and must be located no closer than five (5) feet from any adjacent driveway apron and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.
- (b) *Compliance with Design Standards; Unsightly or Out-of-Character Deployments; **Noise Abatement.*** Unless otherwise approved by the Town, **as required by applicable law** ~~in order to prevent an effective prohibition of service, in violation of applicable law~~ no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower except in accordance with the following design standards:
 - (1) All Communications Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from ~~public~~ **R**ights-of-**W**ay, and so as to not interfere with motorist and pedestrian sightlines, especially at intersections.

- (2) Any new Tower or Support Structure shall be located on the same side of the street as nearest primary electrical distribution lines.
- (3) All radio transceivers, antennas, power supply (including backup battery), and comparable equipment installed on a Tower, Pole, or other Support Structure shall be installed at a height of at least fifteen (15) feet above ground level.
- (4) No **Wireless Facility in the right-of-way** Tower may be located closer than **five hundred (500)** ~~one thousand (1,000)~~ feet of another Tower **Wireless Facility in the Right-of-Way**.
- (5) No more than five **three (53)** antennas may be located on any single Tower, Pole, or Support Structure.
- (6) All coaxial, fiber-optic, or other cabling and wires shall be contained inside the Tower, Pole, or other Support Structure or shall be flush-mounted and covered with a metal, plastic or similar material matching the color of the Tower, Pole, or other Support Structure on which it is installed.
- (7) Unless otherwise approved by the Town, as required by law to prevent an effective prohibition of service, Communications Facilities shall be Collocated. A Tower or other Support Structure shall be constructed in a manner that allows Collocation.**
- (8) All Communications Facilities shall be constructed in a manner to allow the Rights-of-Way to be maintained in compliance with the Americans with Disabilities Act, as amended or replaced.**
- (9) Fans or other elements of a Communication Facility that emit noise shall be accompanied by noise abatement measures as are appropriate to prevent noise disturbances.**
- ~~(7)~~ **(10)** The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the ~~Public-Right-of-Way~~ in a safe condition, and in good order and repair.
- ~~(8)~~ **(11)** Any assignment/subleasing/sublicensing of a Communications Facility must comply with the terms of this Chapter.
- ~~(9)~~ **(12)** All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by the Town.
- ~~(10)~~ **(13)** All Communications Facilities shall be subject to an annual recertification and recertification fee to verify compliance with applicable legal standards regarding emissions, standards established by this Chapter, and design standards set forth in administrative regulations.

(c) *Protection of Trees.*

- (1) Unless otherwise approved by the Town, **as required by applicable law** ~~in order to prevent an effective prohibition of service, in violation of applicable law,~~ no person shall

locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the structure and health of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Manager, in consultation with the Town Arborist and Arboretum Committee as appropriate. **Trees may not be pruned to accommodate a communications facility, pole, tower, or support structure, except as minimally reasonably necessary.**

(2) Unless otherwise approved by the Town, **as required by applicable law** in order to prevent an effective prohibition of service, ~~in violation of applicable law,~~ no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to require the removal of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Council, in consultation with the Town Arborist and Arboretum Committee as appropriate.

(d) *Location Underground.* [Reserved].

(e) ~~Modification of Wireless Facilities~~ **Eligible facilities requests.** The Town shall approve any request for a modification of an eligible existing Tower or base station that does not substantially change the physical dimensions of such Tower or base station, in accordance with Federal law. **Any such approval, whether through affirmative action by the Town or by operations of law, shall be subject to the conditions that (i) the proposed modification as built does in fact qualify as an eligible facilities request under 47 CFR Section 1.6100(b)(3), and (ii) the facility as modified complies with all applicable provisions of this Chapter.**

(f) ~~Restoration of Public Right-of-Way.~~ The applicant shall restore, repair, and/or replace any portion of the ~~public~~ Right-of-Way that is damaged or disturbed by the applicant's work, to the satisfaction of the Town. Such restoration work shall be completed no later than thirty (30) days following completion of the project, or termination of the Right-of-Way Access Agreement, and shall be warranted by the applicant for a period of one (1) year to be free from defects in materials and workmanship. **In the case of Pole replacement, the original Pole shall be removed by the owner of the Pole no later than one hundred eighty (180) days following the installation of the new Pole.**

(g) *Removal, Relocation, and Abandonment.* Within thirty (30) days following written notice from the Town, or such other time as the Town may **reasonably** require, the Town may **require** ~~terminate a Right-of-Way Access Agreement or require other action in connection therewith,~~ and the owner shall, at its own cost and expense, **to** protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of **all or any part** any of its Communications Facilities, Poles, Support Structures, or Towers within the ~~public~~ Right-of-Way, and restore the Right-of-Way as required by the Town, whenever either: (i) ~~the terms of the Right-of-Way Access Agreement have~~ **has** been **terminated** ~~violated~~ **as provided in the Right-of-Way Access Agreement or this Chapter;** (ii) the Communications Facility has not been used for a period of ninety (90) days, or has otherwise been abandoned or not maintained, or (iii) the Town has **reasonably** determined ~~in its sole discretion,~~ that such action is necessary for the construction, installation, repair, or maintenance of any public improvement or otherwise necessary for the public health, safety, or welfare. If the owner fails to take action as required by this section, the Town or its contractor may do so and the owner shall be responsible for all costs and expenses incurred by the Town related to such work.

- (h) **Annual Certification.** Each year on July 1, a wireless provider shall submit an affidavit to the Town that shall list, by location, all small wireless facilities it owns within the Town, and shall certify: (1) each such installation remains in use and is in compliance with this Chapter; (2) such in-use facility remains covered by required insurance; and (3) each such installation which is no longer in use. The affidavit shall be accompanied by the applicable recertification fee, as established by the Town Council from time to time.

Sec. 425 **126.** Enforcement.

- (a) Any violation of the provisions of this Chapter shall be a municipal infraction subject to the imposition of a fine of \$100 for any single initial violation, and \$200 for each day or a repeat or continuing violation.
- (b) Each day that a violation continues shall be a separate offense.
- (d) In any case where the Mayor has reason to believe that there may have been an unremedied violation of this Chapter, the Mayor may issue a Notice of Violation, setting forth the information required in Chapter 9 of this Code, and the Town may seek abatement as provided therein or as otherwise authorized by law.

Sec. 127. Variances.

- (a) **Purpose.** It is the purpose of this Section to provide a procedure for a variance from the strict application of the requirements of this Chapter where, in specific cases, the requirements would effectively prohibit the provision of service, upon proof by a preponderance of the evidence, and the variance is the minimum reasonably necessary to overcome the aforesaid prohibition and allow service.
- (b) **Procedure.**
 - (1) **Application.** An application for a variance shall be made to the Council on a form provided by the Council, shall be accompanied by such plans, drawings, photographs and other documents as may be required by the Council and shall set forth the Section of this Chapter from which a variance is sought, the basis for the claim of need for relief, and the nature and extent of the relief sought.
 - (2) **Public Hearing.** On each application for a variance, a public hearing shall be held and a written opinion made public. At least ten (10) calendar days prior to the public hearing, the Town shall post the area of the right-of-way involved in the application, and provide written notification to all adjoining and confronting property owners and to all Council members, provided, however, that this posting requirement may be altered in order to comply with applicable Federal time limits.

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, by the Council of the Town of Garrett Park, acting under and by virtue of the aforementioned authority, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ____th day of _____, 2023.

Attest:

I hereby attest that the above Ordinance was duly adopted by the Town Council on the ____th day of _____, 2023, by a vote of ___ in favor and ____ in opposition.

Barbara B. Matthews, Town Manager
Town of Garrett Park

Joanna R. Welch, Mayor
Town of Garrett Park

Date: _____

Underline indicates new material
~~Strikethrough~~ indicates material deleted
* * * indicates material unchanged

Small Wireless Facilities Right-of-Way Use and Franchise Agreement

This **Small Wireless Facilities Right-of-Way Use and Franchise Agreement** (“Use Agreement”) is dated as of _____, _____, (the “Effective Date”), and entered into by and between the **Town of Garrett Park**, Maryland, a municipal corporation of the State of Maryland (the “Town”), and _____, a _____ (“Company”), having an address at _____.

WHEREAS, the Town controls, maintains, and holds in trust, for the benefit of the public, the Public Ways within the Town borders; and

WHEREAS, Company desires to locate, construct, operate, and maintain in the Public Ways, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”), and the Maryland Public Service Commission (“PSC”), a network of Small Wireless Facilities and related Equipment (“Network”) in the Public Ways of the Town; and

WHEREAS, the Town is willing to permit Company’s non-exclusive use at approved locations in its Public Ways, in accordance with the terms and conditions of this Use Agreement and pursuant to permits issued by the Town for the installation of Company’s Network in the Public Ways; and

NOW, THEREFORE, in consideration of these recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. DEFINITIONS. The definitions set forth on **Appendix A** shall apply to the provisions of this Use Agreement. Terms not defined therein but defined in the Town Code shall have the meaning set forth in the Town Code.

2. TERM. This Use Agreement shall become effective upon the later of its execution by the Company and its approval of the Town Council and submission to the Town by the Company of a certificate of liability insurance and, to the extent such FCC authorization is required, proof of FCC licensure or authorization to operate Small Wireless Facilities in a geographic area that includes the Town, and, if not terminated in accordance with other provisions of this Use Agreement, shall continue in effect for a term of ten (10) years and, unless terminated by either party, shall automatically be renewed for two (2) additional five (5) year terms. Either party may terminate this Use Agreement at the end of the initial term or a successive term by giving written notice of intent to terminate the Use Agreement at the end of the then-current term.

3. SCOPE OF USE AGREEMENT.

3.1. Permitted Uses. This Use Agreement is limited to the uses specifically set forth herein, and no other use of the Public Way shall be allowed without the Town's express written consent. The Town hereby grants the Company for the period of the Term, subject to the terms and conditions of this Use Agreement, a non-exclusive license to install, operate, repair, maintain, remove and replace Small Wireless Facilities or other Facilities on or over, and to attach such Facilities to Poles located in, the Public Way owned or controlled by the Town, for the provision of Communications Services, provided; however, that such grant is expressly limited to those Facilities and locations in the Public Ways for which the Company receives a permit from the Town. Before offering or providing any Communication Services using the Facilities, the Company shall obtain any and all required regulatory approvals, permits, authorizations and licenses for the

offering or provision of such Communication Services from appropriate Federal, State, and local authorities, and shall submit to the Town evidence of all such approvals, permits, authorizations or licenses.

3.2. Conditions and Limitations. Nothing in this Use Agreement shall abrogate the right of the Town (itself or through its contractors) to construct, operate, maintain, repair or remove any public works or public improvement of any description. Any and all rights expressly granted to Company under this Use Agreement, which shall be exercised at Company's sole cost and expense, shall be subject to the prior and continuing right of the Town under applicable Laws to use any and all parts of the Public Way concurrently with any other person or entity, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Company an interest in any structure, real estate or land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the Town and shall after approval be subject to regulation by the Town, in compliance with local, State and Federal law.

3.3. No Waiver or Release. Nothing in this Use Agreement shall be constructed as a waiver of any codes, ordinances or regulations of the Town or of the Town's right to require the Company or Persons utilizing the Facilities to secure the appropriate permits or authorizations for such use. Except as expressly set forth in this Use Agreement, nothing in this Use Agreement shall be construed as a waiver or release of the rights of the Town in and to the Public Way. In the event that any of the Public Way is eliminated, discontinued, closed or abandoned, all rights and privileges granted pursuant to this Use Agreement with respect to said Public Way, or any part thereof to be eliminated, discontinued, closed or abandoned, shall cease upon the effective date of such elimination, discontinuance, closing or abandonment. The Town shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination, discontinuance, closing or abandonment.

3.4. Exercise of Police Power; Conflicts with Town Code. All rights and privileges granted hereby are subject to the police power of the Town to adopt and enforce local laws, rules and regulations necessary to protect the health, safety and general welfare of the public consistent with any other requirements of Federal or State law. Expressly reserved to the Town is the right to adopt, now and in the future, in addition to the provisions of this Use Agreement and existing laws, ordinances and regulations, such additional laws and regulations as it may find necessary in the exercise of its police power, consistent with Federal and State law, and Company shall comply with all laws, ordinances and regulations, now existing and hereafter adopted whether local, State or Federal. In the event of a conflict between this Use Agreement and the Town Code of Ordinances, the Town Code shall prevail. Notwithstanding the preceding sentence, Company does not waive any right it may have to challenge any Town ordinance, resolution, or regulation adopted after the Effective Date of this Agreement as contrary to applicable Federal or State law.

3.5. Attachment to Third-Party Property. Subject to applicable law and to Company obtaining the written permission of the owner(s) of the affected Poles, the Town hereby authorizes and permits Company to enter upon the Public Way and, subject to the permission of the appropriate Pole owner and the Town's applicable design standards and requirements of the Town Code and regulations, to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Small Wireless Facilities in or on Poles located within the Public Way.

3.6. **No Interference.** Company, in the performance and exercise of its rights and obligations under this Use Agreement, shall not interfere in any manner with the existence and operation of the Public Way or any and all private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, Town property or the original intent of the use of the Public Way, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement.

3.7. **Enclosures.** Company shall not place Pedestals or Vaults in the Public Way without the Town's prior written permission. If permission is granted, all such installations shall be subject to, and in compliance with, the Applicable Standards and applicable Law. Such permission shall not be unreasonably withheld.

3.8. **Compliance with Laws.** Company shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

4. **FEES AND CHARGES.** Company shall be solely responsible for the payment of all lawful Fees in connection with Company's performance under this Use Agreement, including those set forth below.

4.1 **Application Fee (one-time).** To reimburse Town's costs incurred relating to inspection and application processing, Company shall be charged a one-time, non-refundable Application Fee of five hundred dollars (\$500.00) for each Small Wireless Facility application for 5 or fewer locations in the Public Way, plus one hundred dollars (\$100) per additional location above 5, or one thousand dollars (\$1,000) per application for each new Pole or support structure installed by Company. The Town reserves the right to adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications.

4.2. **Right-of-Way Access / Recertification Fee (recurring).** In order to compensate the Town for Company's entry upon and deployment of Small Wireless Facilities within the Public Way, and continued inspection and monitoring by the Town, and Public Way maintenance, Company shall pay to the Town, on an annual basis, a non-refundable fee of two hundred seventy dollars (\$270.00) per each Small Wireless Facility, or such other amount as may be adopted by resolution of the Town Council consistent with applicable Law (the "Right-of-Way Fee"). The Right-of-Way Fee shall be payable annually for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. The annual Right-of-Way Access Fee is due on each anniversary of the Effective Date and is due in full, without proration, for each Small Wireless Facility in place or in the process of installation in the Public Way on the day that the annual payment is due.

4.3. **Late Charge.** If the Town does not receive payment for any fee or other charge or amount owed by the Company within thirty (30) calendar days after it becomes due, Company shall pay interest to Town at the rate of one and one-half percent (1.5%) per month.

5. **CONSTRUCTION.** Company shall comply with all applicable Federal, State, and Town codes, regulations specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Company's Facilities installed in the Public Way. If Company does not repair the site as required herein, the Town shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the costs incurred by the Town at the Town's standard rates, as well as a reasonable administrative fee to coordinate inspections,

reviews and issuance of permits or denials. Upon the receipt of a demand for payment by the Town, Company shall promptly reimburse the Town for such costs. Company shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the Town for each location. The Town's costs shall be a lien on the property and shall be collectible in the same manner as are Town taxes or by suit at law.

5.1. Location List; Annual Certification. On the first anniversary of the Effective Date, Company shall furnish to the Town a list indicating the location(s) of each of its Small Wireless Facilities in the Public Way, and shall update that list annually. Company shall also provide annually, from the date of this Use Agreement, an updated "as-built" map clearly indicating each Facility, which shall specifically identify the owner of underlying Pole or other support structure (*i.e.*, Company or Pepco). Also, a construction plan shall be provided annually, from the date of this Use Agreement, specifically describing, through maps, illustrations, diagrams, construction drawings and written description, construction or other significant work planned for the following calendar year. Each year on or before July 1, Company shall submit an affidavit to the Town which shall list, by location, all Small Wireless Facilities it owns or operates within the Town's Public Way, and shall certify: (1) each such installation that remains in use; (2) such in-use facility remains covered by required insurance; (3) each such installation has been properly maintained over the last 12 months, and (4) each such installation which is no longer in use.

5.2. Professional Certification. Prior to installing any new Attachment, or modifying any existing Attachment in a manner resulting in additional weight or volume being placed on a Pole, and unless otherwise waived in writing by the Town, as part of the Company's permit application process and at Company's sole expense, and prior to installing any new Pole or other support structure, a qualified and experienced professional engineer must certify that Company's Facilities will be attached to the identified Poles or new Poles or other support structures will be installed, in the correct locations and in compliance with the Applicable Standards, the Town's permit conditions, and the specifications set forth in the Company's application. The Town may require Company's professional engineer to conduct a post- construction inspection that the Town will verify by means that it deems to be reasonable, certifying that the proposed Attachments were made, or new Poles installed, in compliance with the Applicable Standards, the Town's permit conditions, and the specifications set forth in the Company's application.

5.3. Damage to Public Way. Whenever the installation, removal or relocation of Company's Facilities is required or permitted under this Use Agreement, and such installation, removal or relocation shall cause the Public Way to be damaged or harmed in any way, including cosmetic damage, Company, at its sole cost and expense, shall promptly repair and return the Public Way in which the Facilities are located to a safe and satisfactory condition in accordance with applicable Laws. If Company does not repair the site as just described, then the Town shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the proposed costs to be incurred or the actual costs incurred by the Town at the Town's standard rates, except that for repairs needed to protect public health or safety, the Town can proceed with the repair on an emergency basis after providing Company with prior notice. Upon the receipt of a demand for payment by the Town, Company shall promptly reimburse the Town for such costs. The Town's costs shall be a lien on the property and shall be collectible in the same manner as are Town taxes or by suit at law.

6. SPECIFICATIONS.

6.1. **Installation.** When a permit is issued pursuant to this Use Agreement, Company's Small Wireless Facilities and other Equipment shall be installed and maintained in accordance with the plans and specifications approved by the Town. Company shall submit to the Town an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Equipment, (2) the specific proposed location(s), dimensions, and height of such Equipment (including specific identification of each Attachment to a Company-installed or third-party Pole or other structure located in the Public Way); (3) the proposed type of construction materials for all structures, and (4) any other details that the Town may reasonably request which are also applicable to other entities installing facilities in the Public Way.

6.2. **Approval by Town.** Company shall not attach, install, maintain, or operate any Small Wireless Facilities in or on the Public Way until plans for such work have been approved by the Town, and all necessary permits have been properly issued. Any significant deviation from the installation plan as set forth in the application (including, for example, a change of node location) made in the course of construction shall require the written consent of the Town, upon which the Town shall act promptly, and may require modification of an existing, or issuance of a new, permit. Approval of plans and specifications and the issuance of any permits by the Town shall not release Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Company shall be responsible for notifying the Town and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected Town-approved permits, as may be necessary.

6.3. **Maintenance of Facilities.** Company shall, at its own expense, make and maintain its Attachment(s) and Facilities in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Use Agreement to the contrary, Company shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards. Company shall use its commercially reasonable efforts to coordinate construction and maintenance of its Facilities with the Town to minimize unnecessary disruption. Prior to commencing construction, installation or maintenance activities, Company shall acquire all required Town permits. Company shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the Town gives Company written notice of a failure by Company to maintain its Facilities, Company shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

6.4. **Tagging; Access to Records.** Company shall Tag all of its Attachments to Poles and other support structures, as specified by the Town and applicable Federal and State regulations, which will allow for ready identification of the type of Attachment and its owner. The Town may periodically inspect Company's Facilities to ensure they are tagged with approved permanent identification markers. The Town shall have the right, upon reasonable notice, to access and inspect the Company's books and records related to its Facilities in the Town, to confirm compliance with this Use Agreement.

6.5. **RF Emissions.** Company is solely responsible for the radio frequency ("RF") emissions emitted by its Small Wireless Facilities and associated Equipment and their compliance with applicable FCC rules. Company is jointly responsible for ensuring RF exposure from its emissions, in combination with the emissions of all other contributing sources of RF emissions, is within the limits permitted under all applicable rules of the FCC. To the extent required by FCC rules,

Company shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.

6.6. Protective Equipment. Company and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

6.7. Maximum Permissible Exposure Report. Within 30 days of its delivery to Montgomery County ("County"), Company shall furnish the Town a copy of any report to the County concerning RF emissions that relates, in whole or in part, to Company's Facilities located in the Town. Within thirty (30) days of Company's submission to the FCC of any reports on maximum permissible exposure to RF emissions relating, in whole or in part, to Company's Facilities in the Town, Company shall submit a copy of that report to the Town. Failure to provide the report or failure to comply, in a timely manner, with FCC standards for limiting human exposure to radio frequency emissions shall be an event of default.

6.8. Emergency Contact Information. Company shall provide emergency after-hours contact information to the Town to ensure proper notification in case of an Emergency. Information will include 24/7 telephone and cell phone information, and a list of duty managers by district and escalation procedures.

6.9. Violation of Specifications. If Company's Facilities, or any part of them, are installed, used, or maintained in violation of this Use Agreement, and Company has not corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from the Town, the provisions of Section 13 shall apply. When the Town believes, however, that such violation(s) pose an Emergency, the Town may perform such work and/or take such action as it deems necessary without first giving written notice to Company. As soon as practicable afterward, the Town will advise Company of the work performed or the action taken. Company shall be responsible for all actual and documented costs incurred by the Town in taking action pursuant to this Section. Company shall indemnify the Town for any such work. The Town's costs shall be a lien on the property and shall be collectible in the same manner as are Town taxes or by suit at law.

7. INDEMNIFICATION AND WAIVER.

7.1. Indemnification by Company. Company shall indemnify, defend and hold harmless the Town, its elected/appointed officials, departments, employees, agents and representatives from any and all claims, demands, suits and actions, including attorneys' fees and court costs connected therewith, brought against the Town, its elected/appointed officials, departments, employees, agents or representatives and arising from Company's use of the Public Way, the installation, operation or maintenance of its Facilities, or any act or omission of Company, its agents, officers or employees related thereto.

7.2. Waiver of Claims. Company shall use the Public Way at its own risk and the Town shall not be responsible for any damages thereof due to any cause. Neither the Town nor any other user of the Public Way shall be liable to Company for any interruption of Company's services, including but not limited to the failure of Company's equipment to perform as intended, arising in any manner. Company waives any and all claims, demands, causes of action, and rights it may assert against the Town on account of any loss, damage, or injury to any of its Facilities or any loss or degradation of any Communication Services provided over those Facilities.

7.3. Waiver of Punitive and Consequential Damages. Both parties hereby waive the right to recover punitive and consequential damages from the other party; however, this provision does not apply to indemnity.

7.4. Enforcement. The Town shall be entitled to an award of its expenses, including reasonable attorney's fees, incurred in enforcement of this Use Agreement.

8. ENVIRONMENTAL. Company shall protect, defend, indemnify, and hold the Town harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from Company's occupancy, use, development, maintenance, or restoration of the Public Way or installation operation or maintenance of its Facilities, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary Town response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, Company's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. Notwithstanding the foregoing or any other provision in this Agreement, Company shall not be liable or responsible for any environmental condition, including the release of Hazardous Substances, that existed before the commencement of Company's activities under this Agreement, or that otherwise does not result from the activities of Company.

9. GOVERNMENTAL IMMUNITY. No provision of this Use Agreement is intended, or shall be construed, to be a waiver for any purpose by the Town of any applicable governmental immunity State or limits on liability. No indemnification provision contained in this Use Agreement under which Company indemnifies the Town shall be construed in any way to limit any other indemnification provision contained in this Use Agreement.

10. INSURANCE.

10.1. Company shall obtain and maintain at all times during the term of this Use Agreement, Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Company in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and with respect to the Commercial General Liability policy, in an amount not less than Three Million Dollars (\$3,000,000) in the annual aggregate for each personal injury liability. Such insurance shall contain a waiver of the right of subrogation against the Town. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Town has received at least thirty (30) days' advance written notice of such cancellation or change. Company shall be responsible for notifying the Town of such change or cancellation. Prior to the commencement of any work pursuant to this Use Agreement, Company shall file with the Town proof that the required insurance has been obtained.

10.2. **Insurer Criteria.** Any insurance provider of Company shall be admitted and authorized to do business in the Commonwealth of Maryland and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

11. NOTICES.

11.1. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

If to the Town:

Town Manager
Town of Garrett Park
P.O. Box 84
Garrett Park, Maryland 20896

If to the Company:

11.2. **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

12. ASSIGNMENT. Company shall not assign its rights or obligations under this Use Agreement, nor any part of such rights or obligations, without the prior written consent of the Town, which consent shall not be unreasonably withheld. The parties agree that all obligations of the Company as set forth herein shall be binding upon the permitted assigns.

13. TERMINATION AND DEFAULT.

13.1. **Default.** An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Company if Company shall breach any material term or condition of this Use Agreement; or Company shall fail to perform, observe or meet any material covenant or condition made in this Use Agreement; or at any time, any representation, warranty or statement made by Company herein shall be incorrect or misleading in any material respect.

13.2. **Remedies.** Upon the occurrence of any one or more of the Events of Default, Town, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon a bond for any fees, costs, expenses or penalties that Company has not paid, and in addition, at its option, the Town may terminate this Use Agreement upon providing notice to Company, provided, however, the Town may take such action or actions only after first giving Company written notice of the Event of Default and a reasonable time within which Company may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30)

calendar days, except that the period of time shall not be less than ten (10) calendar days for any monetary amounts past due and owing by Company to the Town, or for failure to maintain adequate insurance or bonds, as provided for herein.

13.3. Removal Due to Termination or Abandonment. Following the termination of this Use Agreement for any reason, or in the event Company ceases to operate and abandons the Network, Company shall, within one hundred twenty (120) days, at its sole cost and expense, remove all of its Facilities from the Public Way and restore the area affected by its Facilities to its condition at the commencement of this Use Agreement, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Company to the Public Way or the adjacent property, or as otherwise required by the Town. If not so removed within that time period, the Town shall have the right to remove Company's Facilities, and Company agrees to pay the actual and documented cost thereof, within forty-five (45) days after it has received an invoice from the Town.

14. MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

14.1. Nonexclusive Use. Company understands that this Use Agreement does not provide Company with exclusive use of the Public Way and that the Town shall have the right to permit other providers of the same, similar or other services to install equipment or devices in the Public Way. The Company understands that other governmental or quasi-governmental agencies, public utilities, franchisees and other similar entities may conduct activities, such as excavation, construction, demolition and installation of other facilities in the public right-of-way. The Company agrees that the Town shall not be responsible for any damage caused by the aforesaid entities to the Attachments and other Facilities installed by Company pursuant to this Use Agreement;

14.2. Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

14.3. Contacting Company. Company shall be available to the staff employees of the Town twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of Facilities. The Town may contact _____ at telephone number _____ regarding such problems or complaints.

14.4. Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Maryland. If suit is brought by a party to this Use Agreement, the parties agree that any lawsuit shall be brought in either State or Federal court of competent jurisdiction and venue in Maryland.

14.5. Change of Law. If any Laws that govern any aspect of the rights or obligations of the parties under this Use Agreement shall change after the Effective Date and such change preempts any aspect of such rights or obligations as inconsistent with the then-effective Laws, then the parties agree to promptly amend or replace this Use Agreement as reasonably required to accommodate and/or ensure compliance with any such change in Law, provided, however, that if such change in Law deprives either party of a substantial benefit of its bargain under this Use Agreement, then such party shall have the right to terminate this Use Agreement by providing notice to the other party.

14.6. **Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

14.7. **Representations and Warranties.** Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform that Party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

14.8 **Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9. **Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

14.10. **Duties Survive.** The duties described in this Use Agreement, including but not limited to indemnity, shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this license under seal, with the express intent of making a specialty, on this ____ day of _____, 202__.

COMPANY:

TOWN OF GARRETT PARK

(SEAL)

By:

(SEAL)

Barbara B. Matthews, Town Manager

Appendix A Definitions

Affiliate: When used in relation to Company, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Company.

Applicable Standards: Means all applicable engineering and safety standards governing the installation, maintenance, operation of Facilities and the performance of all work in or around Poles and the Public Ways and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Federal Communication Commission (“FCC”) (including but not limited to radio frequency emission standards) and the Occupational Safety and Health Administration (“OSHA”), and the provisions of the Town’s Right-of-Way regulations, building and zoning codes, each of which is incorporated by reference in this Agreement, and other reasonable safety and engineering requirements of the Town or any Federal State or County authority with jurisdiction over Poles or the Public Ways.

Attachment(s): Means Small Wireless Facilities that are placed directly on Poles, including radios, antenna, and associated cables and hardware, as approved in writing by the Director of Public Works and filed with the Department of Public Works prior to their placement on Poles.

Authorizations: Means the applicable permissions Company must obtain to deploy or operate the Network and/or provide Communications Services, which may include franchise or right-of-way use agreements; licenses, permits, zoning approvals; variances, exemptions, grants of authority to use private rights of way and/or easements or facilities, agreements to make attachments to poles, ducts, conduits, manholes, and the like; and any other applicable approval or authorization of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any applicable requirement by a governmental authority for the engagement in a business or enterprise or the provision of services.

Base Station: Means fixed communications equipment for reception and/or transmission of mobile services, such as microcell antennas and associated equipment (amplifiers, connective cabling, batteries), to support the facility.

Communication Services: Means wireless transmission and transport of personal wireless services and private mobile service, as those terms are defined in 47 U.S.C. §332, as amended from time to time, that are provided by Company or its Affiliates using the Network pursuant to, and authorized by, Federal or State law.

County: Means Montgomery County, Maryland.

Emergency: Means a situation that, in the reasonable discretion of the Town or Company, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.

Equipment: Means the optical converters, power amplifiers, radios, multiplexers, microcells, remote radio heads, antennas, cables, wires, meters, pedestals, power switches, and related equipment, whether referred to singly or collectively, to be installed or operated by Company hereunder.

Facilities: Means Small Wireless Facilities, Equipment, and any Pole or other support structure that is installed or operated by Company in or on any Public Way.

FCC: Means the Federal Communications Commission or any successor federal agency.

Law or Laws: Means any and all applicable and lawful statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Town, County, State, FCC, any other agency, department or branch of the Federal Government, or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

Company: Means the Company, and its lawful successors, permitted assigns and transferees, and may also be referred to in conjunction with the Town as the Party, Other Party, or Parties collectively.

Network: Means all of the Facilities owned or operated by Company and located within the Town.

Pedestals/Vaults/Enclosures: Means above or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.

Pole: Means a pole whether owned or controlled by the Company, or a third party and capable of supporting Attachments for Small Wireless Facilities.

Public Way: Means the space in, upon, above, along, across, and over the public rights-of-way and streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lands, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the Town. This term shall not include (a) any County, State, or Federal rights-of-way or any property owned by any person or entity other than the Town, except as provided by applicable Laws or pursuant to any agreement between the Town and any such person or entity, or (b) any property owned by the Town, such as a park or property on which Town buildings are located, that is not a public right-of-way.

Small Wireless Facility: Means each of the Company's Equipment and Facilities that satisfies the definition of "small wireless facilities" in the FCC's rules, 47 CFR Section 1.6002(l).

Ordinance No. 2023-4
Introduced: July 10, 2023
Adoption:
Effective Date:

**TOWN OF GARRETT PARK
ORDINANCE NO. 2023-4**

**SMALL WIRELESS TELECOMMUNICATIONS FACILITIES
(2023 AMENDMENTS)**

AN ORDINANCE TO AMEND CHAPTER 12 OF THE TOWN CODE CONCERNING SMALL WIRELESS TELECOMMUNICATIONS FACILITIES TO CLARIFY PROVISIONS; ADD PERMIT APPLICATION REQUIREMENTS; ADD AND MODIFY STANDARDS FOR DEPLOYMENT; DISALLOW PRUNING OF TREES EXCEPT AS MINIMALLY REASONABLY NECESSARY; REQUIRE REPLACED POLES TO BE REMOVED WITHIN 180 DAYS; REDUCE THE ALLOWABLE EQUIPMENT SIZE FROM 28 TO 12 CUBIC FEET; REQUIRE ANNUAL CERTIFICATION CONCERNING FACILITIES IN USE; AND ADD REQUIREMENTS FOR VARIANCE REQUESTS

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and,

WHEREAS, United States Code, Title 47, Section 332, provides that a local government may exercise control regarding the placement, construction, and modification of personal wireless service facilities, provided the local government does not unreasonably discriminate among providers of functionally equivalent services; and does not prohibit the provision of personal wireless services; and,

WHEREAS, United States Code, Title 47, Section 332, provides that a local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request; and any decision by a local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record; and,

WHEREAS, United States Code, Title 47, Section 1455, provides that a local government may

deny a facility request for a modification of an existing wireless tower or base station if it substantially changes the physical dimensions of such tower or base station, including requests for the collocation, removal, or replacement of transmission equipment; and,

WHEREAS, the Town of Garrett Park holds and maintains the streets and highways within its municipal boundaries in trust for the benefit, use, and convenience of the general public; and,

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary; and,

WHEREAS, Section 400 of the Ordinances of the Town of Garrett Park recognizes that the Town has been designated in the National Register of Historic Places since 1975 and that the Town desires to maintain its historic character consistent with this designation; and,

WHEREAS, Section 717 of the Ordinances of the Town of Garrett Park recognizes the Town's creation of the Garrett Park Arboretum, as specifically defined in Section 717(b)(2) to include "all trees, shrubs, woody plants, and other herbaceous material planted or maintained by the Town on any and all public land owned by the Town"; and,

WHEREAS, Section 715(b) of the Ordinances of the Town of Garrett Park states that "The planting, maintenance and removal of trees in the unpaved street areas dedicated to public use shall be the responsibility of the Council and trees may be planted in or removed from such an area only with the explicit consent of the Council"; and,

WHEREAS, Order 18-133 issued by the Federal Communications Commission, on September 26, 2018, effective January 14, 2019, requires a local government to provide in writing any aesthetic standards that govern the installation of small wireless telecommunications facilities in the public rights-of-way; and the Town adopted Chapter 12 in response thereto, and now amends said Chapter; and,

WHEREAS, after proper notice to the public, the Town Council adopted Ordinance No. 2109-3 in an open meeting conducted on the 14th day of January 2019; and,

WHEREAS, upon consideration of the testimony and evidence presented at the public hearing, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, this _____th day of _____ 2023, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town of Garrett Park Charter, the Town Council does hereby adopt the foregoing Ordinance and amend the Town Code as follows:

* * *

CHAPTER 12

SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

Sec. 120. Intent and Purpose.

It is the intent of the Town Council to promote the Town's public health, safety, and general welfare by providing regulatory requirements for the installation, **operation**, and maintenance of small wireless telecommunications facilities in the public rights-of-way. The purpose of this Chapter is to regulate the same to enhance vehicular and pedestrian safety and avoid interference with motorist and pedestrian sightlines; to protect and minimize damage to trees and plants of the Garrett Park Arboretum; to reduce visual clutter and prevent unsightly or out-of-character deployments consistent with the goals of the Town's National Register of Historic Places designation; to preserve the value of property and the character of the neighborhood; and to otherwise protect the health, safety, and general welfare of the town and its residents, and the public at large.

Sec. 121. Definitions.

"Base Station" means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not include a Tower or any equipment associated with a Tower.

"Collocate" means to install or mount a Small Wireless Facility in the public Right-of-Way on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the application. "Collocation" has a corresponding meaning.

"Communications Facility" means, collectively, the equipment at a fixed location or locations within the public Right-of-Way that enables Wireless Services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

"Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within a public Right-of-Way. The term does not include a Tower or Support Structure.

"Right-of-Way" means any unpaved street area dedicated to public use.

"Small Wireless Facility" means a Wireless Facility that meets all of the following conditions:

- (1) The structure on which antenna facilities are mounted (i) is fifty (50) feet or less in height, including existing antennas, or (ii) is no more than ten (10) percent taller than other adjacent structures, or (iii) is not extended to a height of more than fifty (50) feet or by more than ten (10) percent above its preexisting height, whichever is greater; and
- (2) Each antenna associated with the deployment, excluding the associated equipment **but including any enclosure containing an antenna**, is no more than three (3) cubic feet in volume; and
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than ~~twenty-eight (28)~~ **twelve (12)** cubic feet in volume; and
- (4) The facility does not require antenna structure registration under Federal law; and
- (5) The facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law, **as amended**.

“Support Structure” means a structure in a public Right-of-Way other than a Pole or a Tower, **including a Pole, to which a Wireless Facility is attached, or proposed to be attached** ~~to which a Wireless Facility is attached at the time of the Application.~~

“Tower” means any structure in a public Right-of-Way, within or outside the boundaries of the Town, built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

“Wireless Facility” means the equipment at a fixed location or locations in the public Right-of-Way that enables Wireless Services. A Small Wireless Facility is a type of a Wireless Facility. The term does not include the Pole, Tower, or Support Structure on, under, or within which the equipment is located or collocated, or the coaxial, fiber-optic, or other cabling between Communications Facilities or Poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna. **As used in this Chapter, “Wireless Facility” and “Communications Facility” are synonymous.**

“Wireless Service Provider” or “Provider” means a person who provides Wireless Services.

“Wireless Services” means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. 122. Only Small Wireless Facilities Permitted.

Unless otherwise required by law, no Wireless Facility other than a Small Wireless Facility may be installed or operated in the Rights-of-Way.

Sec. 122 ~~123~~. Permit and Access Agreement Required.

- (a) No person shall construct, install, maintain, or perform any work in the public Right-of-Way related to a Communications Facility, **Support Structure**, or any Tower without first receiving a Permit and paying any applicable fee as required under this Chapter. No permit shall be issued until the applicant has entered into a Right-of-Way Access Agreement in a

form approved by the Town, according to this Chapter. A permit shall not be required for ordinary maintenance and repair, as determined by the Town.

- (b) The Right-of-Way Access Agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the bases for termination; (b) the scope of the authority; (c) the operator's maintenance obligations; (d) the operator's indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) the Town's right to access and inspect the operator's books and records **and facilities located in the Right-of-Way.**
- (c) **A Right-of-Way Access Agreement may be terminated by the Town as set forth in the access agreement, or, in the event this Chapter is amended or replaced and the Town determines, consistent with applicable law, that termination is necessary. In such event, a new permit and Right-of-Way Access Agreement shall be required according to the requirements of the amended or replaced chapter.**

Sec. 423 **124.** Permit Application Requirements.

- (a) An application for a permit under this Chapter must contain or be submitted with the following:
 - (1) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
 - (3) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter;
 - (4) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached;
 - (5) Detailed construction drawings regarding the proposed facility;
 - (6) **A representation as to whether the applicant contends that the application is an eligible facilities request within the meaning of 47 CFR Section 1.6100(b)(3), as amended or replaced, and, if so, drawings and an engineer's certification establishing the accuracy of that contention;**
 - (7) ~~(6)~~ A structural report performed by a duly-licensed engineer evidencing that the Pole, Tower or Support Structure can adequately support the Collocation (or that the Pole, Tower, or Support Structure will be modified to meet structural requirements) in accordance with applicable codes;
 - (8) **A detailed deployment plan describing all Communications Facilities, Poles, Towers, or Support Structures planned to be used or installed by the applicant for twenty-four (24) months following the permit application anywhere in the Town, and a description of any completed deployments within the Town;**

- (9) ~~(7)~~ A certification by a radiofrequency engineer that the Communications Facility will comply with the radiofrequency radiation emission standards adopted by the Federal Communications Commission; and
 - (10) ~~(8)~~ The applicable application fee, bond, Right-of-Way Access Agreement, and Right-of-Way access fee, as may be adopted and amended by resolution of the Town Council.
- (b) The Town may require the posting of a bond to guarantee the prompt and proper restoration of the ~~public~~ Right-of-Way. The bond may be in such amount as the Town Manager deems necessary, ~~in~~ at the Town Manager's discretion **to allow the prompt and proper restoration of the Right-of-Way.**
 - (c) In exchange for the privilege of non-exclusive use of the ~~public~~ Right-of-Way, the applicant shall pay the Town such access and recertification fees as may be established and amended by the Town by resolution from time to time.
 - (d) Any permit issued under this Chapter shall be valid for a period of twelve (12) months after issuance.
 - (e) No work may be performed except in strict accordance with applicable law and the Town permit and all approved plans and specifications.
 - (f) No permit shall be issued except to a Wireless Service Provider with immediate plans for use of the subject Communications Facility. A permit issued under this Chapter may not be assigned or transferred.

Sec. 424 **125.** Standards for Deployment in the ~~Public~~ Right-of-Way.

- (a) *No Interference with Right-of-Way.* No person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the use of the ~~public~~ Right-of-Way by the Town, the general public, or other persons authorized to use or be present in or upon the ~~public~~ Right-of-Way, or otherwise hinder the ability of the Town to improve, modify, relocate, abandon or vacate a ~~public~~ Right-of-Way or any portion thereof. Unless otherwise approved by the Town, any new Tower or Support Structure must not confront a driveway apron and must be located no closer than five (5) feet from any adjacent driveway apron and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.
- (b) *Compliance with Design Standards; Unsightly or Out-of-Character Deployments; **Noise Abatement.*** Unless otherwise approved by the Town, **as required by applicable law** ~~in order to prevent an effective prohibition of service, in violation of applicable law~~ no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower except in accordance with the following design standards:
 - (1) All Communications Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from ~~public~~ **R**ights-of-**W**ay, and so as to not interfere with motorist and pedestrian sightlines, especially at intersections.

- (2) Any new Tower or Support Structure shall be located on the same side of the street as nearest primary electrical distribution lines.
- (3) All radio transceivers, antennas, power supply (including backup battery), and comparable equipment installed on a Tower, Pole, or other Support Structure shall be installed at a height of at least fifteen (15) feet above ground level.
- (4) No **Wireless Facility in the right-of-way** Tower may be located closer than **five hundred (500)** ~~one thousand (1,000)~~ feet of another Tower **Wireless Facility in the Right-of-Way**.
- (5) No more than five **three** (~~53~~) antennas may be located on any single Tower, Pole, or Support Structure.
- (6) All coaxial, fiber-optic, or other cabling and wires shall be contained inside the Tower, Pole, or other Support Structure or shall be flush-mounted and covered with a metal, plastic or similar material matching the color of the Tower, Pole, or other Support Structure on which it is installed.
- (7) Unless otherwise approved by the Town, as required by law to prevent an effective prohibition of service, Communications Facilities shall be Collocated. A Tower or other Support Structure shall be constructed in a manner that allows Collocation.**
- (8) All Communications Facilities shall be constructed in a manner to allow the Rights-of-Way to be maintained in compliance with the Americans with Disabilities Act, as amended or replaced.**
- (9) Fans or other elements of a Communication Facility that emit noise shall be accompanied by noise abatement measures as are appropriate to prevent noise disturbances.**
- ~~(7)~~ **(10)** The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the ~~Public-Right-of-Way~~ in a safe condition, and in good order and repair.
- ~~(8)~~ **(11)** Any assignment/subleasing/sublicensing of a Communications Facility must comply with the terms of this Chapter.
- ~~(9)~~ **(12)** All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by the Town.
- ~~(10)~~ **(13)** All Communications Facilities shall be subject to an annual recertification and recertification fee to verify compliance with applicable legal standards regarding emissions, standards established by this Chapter, and design standards set forth in administrative regulations.

(c) *Protection of Trees.*

- (1) Unless otherwise approved by the Town, **as required by applicable law** ~~in order to prevent an effective prohibition of service, in violation of applicable law,~~ no person shall

locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the structure and health of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Manager, in consultation with the Town Arborist and Arboretum Committee as appropriate. **Trees may not be pruned to accommodate a communications facility, pole, tower, or support structure, except as minimally reasonably necessary.**

- (2) Unless otherwise approved by the Town, **as required by applicable law** in order to prevent an effective prohibition of service, ~~in violation of applicable law,~~ no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to require the removal of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Council, in consultation with the Town Arborist and Arboretum Committee as appropriate.
- (d) *Location Underground.* [Reserved].
- (e) ~~Modification of Wireless Facilities~~ **Eligible facilities requests.** The Town shall approve any request for a modification of an eligible existing Tower or base station that does not substantially change the physical dimensions of such Tower or base station, in accordance with Federal law. **Any such approval, whether through affirmative action by the Town or by operations of law, shall be subject to the conditions that (i) the proposed modification as built does in fact qualify as an eligible facilities request under 47 CFR Section 1.6100(b)(3), and (ii) the facility as modified complies with all applicable provisions of this Chapter.**
- (f) ~~Restoration of Public Right-of-Way.~~ The applicant shall restore, repair, and/or replace any portion of the ~~public~~ Right-of-Way that is damaged or disturbed by the applicant's work, to the satisfaction of the Town. Such restoration work shall be completed no later than thirty (30) days following completion of the project, or termination of the Right-of-Way Access Agreement, and shall be warranted by the applicant for a period of one (1) year to be free from defects in materials and workmanship. **In the case of Pole replacement, the original Pole shall be removed by the owner of the Pole no later than one hundred eighty (180) days following the installation of the new Pole.**
- (g) *Removal, Relocation, and Abandonment.* Within thirty (30) days following written notice from the Town, or such other time as the Town may **reasonably** require, the Town may **require** ~~terminate a Right-of-Way Access Agreement or require other action in connection therewith,~~ and the owner shall, at its own cost and expense, **to** protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of **all or any part** any of its Communications Facilities, Poles, Support Structures, or Towers within the ~~public~~ Right-of-Way, and restore the Right-of-Way as required by the Town, whenever either: (i) ~~the terms of the Right-of-Way Access Agreement have~~ **has** been **terminated** ~~violated~~ **as provided in the Right-of-Way Access Agreement or this Chapter;** (ii) the Communications Facility has not been used for a period of ninety (90) days, or has otherwise been abandoned or not maintained, or (iii) the Town has **reasonably** determined ~~in its sole discretion,~~ that such action is necessary for the construction, installation, repair, or maintenance of any public improvement or otherwise necessary for the public health, safety, or welfare. If the owner fails to take action as required by this section, the Town or its contractor may do so and the owner shall be responsible for all costs and expenses incurred by the Town related to such work.

- (h) **Annual Certification.** Each year on July 1, a wireless provider shall submit an affidavit to the Town that shall list, by location, all small wireless facilities it owns within the Town, and shall certify: (1) each such installation remains in use and is in compliance with this Chapter; (2) such in-use facility remains covered by required insurance; and (3) each such installation which is no longer in use. The affidavit shall be accompanied by the applicable recertification fee, as established by the Town Council from time to time.

Sec. 425 **126.** Enforcement.

- (a) Any violation of the provisions of this Chapter shall be a municipal infraction subject to the imposition of a fine of \$100 for any single initial violation, and \$200 for each day or a repeat or continuing violation.
- (b) Each day that a violation continues shall be a separate offense.
- (d) In any case where the Mayor has reason to believe that there may have been an unremedied violation of this Chapter, the Mayor may issue a Notice of Violation, setting forth the information required in Chapter 9 of this Code, and the Town may seek abatement as provided therein or as otherwise authorized by law.

Sec. 127. Variances.

- (a) **Purpose.** It is the purpose of this Section to provide a procedure for a variance from the strict application of the requirements of this Chapter where, in specific cases, the requirements would effectively prohibit the provision of service, upon proof by a preponderance of the evidence, and the variance is the minimum reasonably necessary to overcome the aforesaid prohibition and allow service.
- (b) **Procedure.**
 - (1) **Application.** An application for a variance shall be made to the Council on a form provided by the Council, shall be accompanied by such plans, drawings, photographs and other documents as may be required by the Council and shall set forth the Section of this Chapter from which a variance is sought, the basis for the claim of need for relief, and the nature and extent of the relief sought.
 - (2) **Public Hearing.** On each application for a variance, a public hearing shall be held and a written opinion made public. At least ten (10) calendar days prior to the public hearing, the Town shall post the area of the right-of-way involved in the application, and provide written notification to all adjoining and confronting property owners and to all Council members, provided, however, that this posting requirement may be altered in order to comply with applicable Federal time limits.

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, by the Council of the Town of Garrett Park, acting under and by virtue of the aforementioned authority, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ____th day of _____, 2023.

Attest:

I hereby attest that the above Ordinance was duly adopted by the Town Council on the ____th day of _____, 2023, by a vote of ___ in favor and ____ in opposition.

Barbara B. Matthews, Town Manager
Town of Garrett Park

Joanna R. Welch, Mayor
Town of Garrett Park

Date: _____

Underline indicates new material
~~Strikethrough~~ indicates material deleted
* * * indicates material unchanged

Small Wireless Facilities Right-of-Way Use and Franchise Agreement

This **Small Wireless Facilities Right-of-Way Use and Franchise Agreement** (“Use Agreement”) is dated as of _____, _____, (the “Effective Date”), and entered into by and between the **Town of Garrett Park**, Maryland, a municipal corporation of the State of Maryland (the “Town”), and _____, a _____ (“Company”), having an address at _____.

WHEREAS, the Town controls, maintains, and holds in trust, for the benefit of the public, the Public Ways within the Town borders; and

WHEREAS, Company desires to locate, construct, operate, and maintain in the Public Ways, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”), and the Maryland Public Service Commission (“PSC”), a network of Small Wireless Facilities and related Equipment (“Network”) in the Public Ways of the Town; and

WHEREAS, the Town is willing to permit Company’s non-exclusive use at approved locations in its Public Ways, in accordance with the terms and conditions of this Use Agreement and pursuant to permits issued by the Town for the installation of Company’s Network in the Public Ways; and

NOW, THEREFORE, in consideration of these recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. DEFINITIONS. The definitions set forth on **Appendix A** shall apply to the provisions of this Use Agreement. Terms not defined therein but defined in the Town Code shall have the meaning set forth in the Town Code.

2. TERM. This Use Agreement shall become effective upon the later of its execution by the Company and its approval of the Town Council and submission to the Town by the Company of a certificate of liability insurance and, to the extent such FCC authorization is required, proof of FCC licensure or authorization to operate Small Wireless Facilities in a geographic area that includes the Town, and, if not terminated in accordance with other provisions of this Use Agreement, shall continue in effect for a term of ten (10) years and, unless terminated by either party, shall automatically be renewed for two (2) additional five (5) year terms. Either party may terminate this Use Agreement at the end of the initial term or a successive term by giving written notice of intent to terminate the Use Agreement at the end of the then-current term.

3. SCOPE OF USE AGREEMENT.

3.1. Permitted Uses. This Use Agreement is limited to the uses specifically set forth herein, and no other use of the Public Way shall be allowed without the Town's express written consent. The Town hereby grants the Company for the period of the Term, subject to the terms and conditions of this Use Agreement, a non-exclusive license to install, operate, repair, maintain, remove and replace Small Wireless Facilities or other Facilities on or over, and to attach such Facilities to Poles located in, the Public Way owned or controlled by the Town, for the provision of Communications Services, provided; however, that such grant is expressly limited to those Facilities and locations in the Public Ways for which the Company receives a permit from the Town. Before offering or providing any Communication Services using the Facilities, the Company shall obtain any and all required regulatory approvals, permits, authorizations and licenses for the

offering or provision of such Communication Services from appropriate Federal, State, and local authorities, and shall submit to the Town evidence of all such approvals, permits, authorizations or licenses.

3.2. Conditions and Limitations. Nothing in this Use Agreement shall abrogate the right of the Town (itself or through its contractors) to construct, operate, maintain, repair or remove any public works or public improvement of any description. Any and all rights expressly granted to Company under this Use Agreement, which shall be exercised at Company's sole cost and expense, shall be subject to the prior and continuing right of the Town under applicable Laws to use any and all parts of the Public Way concurrently with any other person or entity, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Company an interest in any structure, real estate or land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the Town and shall after approval be subject to regulation by the Town, in compliance with local, State and Federal law.

3.3. No Waiver or Release. Nothing in this Use Agreement shall be constructed as a waiver of any codes, ordinances or regulations of the Town or of the Town's right to require the Company or Persons utilizing the Facilities to secure the appropriate permits or authorizations for such use. Except as expressly set forth in this Use Agreement, nothing in this Use Agreement shall be construed as a waiver or release of the rights of the Town in and to the Public Way. In the event that any of the Public Way is eliminated, discontinued, closed or abandoned, all rights and privileges granted pursuant to this Use Agreement with respect to said Public Way, or any part thereof to be eliminated, discontinued, closed or abandoned, shall cease upon the effective date of such elimination, discontinuance, closing or abandonment. The Town shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination, discontinuance, closing or abandonment.

3.4. Exercise of Police Power; Conflicts with Town Code. All rights and privileges granted hereby are subject to the police power of the Town to adopt and enforce local laws, rules and regulations necessary to protect the health, safety and general welfare of the public consistent with any other requirements of Federal or State law. Expressly reserved to the Town is the right to adopt, now and in the future, in addition to the provisions of this Use Agreement and existing laws, ordinances and regulations, such additional laws and regulations as it may find necessary in the exercise of its police power, consistent with Federal and State law, and Company shall comply with all laws, ordinances and regulations, now existing and hereafter adopted whether local, State or Federal. In the event of a conflict between this Use Agreement and the Town Code of Ordinances, the Town Code shall prevail. Notwithstanding the preceding sentence, Company does not waive any right it may have to challenge any Town ordinance, resolution, or regulation adopted after the Effective Date of this Agreement as contrary to applicable Federal or State law.

3.5. Attachment to Third-Party Property. Subject to applicable law and to Company obtaining the written permission of the owner(s) of the affected Poles, the Town hereby authorizes and permits Company to enter upon the Public Way and, subject to the permission of the appropriate Pole owner and the Town's applicable design standards and requirements of the Town Code and regulations, to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Small Wireless Facilities in or on Poles located within the Public Way.

3.6. **No Interference.** Company, in the performance and exercise of its rights and obligations under this Use Agreement, shall not interfere in any manner with the existence and operation of the Public Way or any and all private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, Town property or the original intent of the use of the Public Way, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement.

3.7. **Enclosures.** Company shall not place Pedestals or Vaults in the Public Way without the Town's prior written permission. If permission is granted, all such installations shall be subject to, and in compliance with, the Applicable Standards and applicable Law. Such permission shall not be unreasonably withheld.

3.8. **Compliance with Laws.** Company shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

4. **FEES AND CHARGES.** Company shall be solely responsible for the payment of all lawful Fees in connection with Company's performance under this Use Agreement, including those set forth below.

4.1 **Application Fee (one-time).** To reimburse Town's costs incurred relating to inspection and application processing, Company shall be charged a one-time, non-refundable Application Fee of five hundred dollars (\$500.00) for each Small Wireless Facility application for 5 or fewer locations in the Public Way, plus one hundred dollars (\$100) per additional location above 5, or one thousand dollars (\$1,000) per application for each new Pole or support structure installed by Company. The Town reserves the right to adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications.

4.2. **Right-of-Way Access / Recertification Fee (recurring).** In order to compensate the Town for Company's entry upon and deployment of Small Wireless Facilities within the Public Way, and continued inspection and monitoring by the Town, and Public Way maintenance, Company shall pay to the Town, on an annual basis, a non-refundable fee of two hundred seventy dollars (\$270.00) per each Small Wireless Facility, or such other amount as may be adopted by resolution of the Town Council consistent with applicable Law (the "Right-of-Way Fee"). The Right-of-Way Fee shall be payable annually for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. The annual Right-of-Way Access Fee is due on each anniversary of the Effective Date and is due in full, without proration, for each Small Wireless Facility in place or in the process of installation in the Public Way on the day that the annual payment is due.

4.3. **Late Charge.** If the Town does not receive payment for any fee or other charge or amount owed by the Company within thirty (30) calendar days after it becomes due, Company shall pay interest to Town at the rate of one and one-half percent (1.5%) per month.

5. **CONSTRUCTION.** Company shall comply with all applicable Federal, State, and Town codes, regulations specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Company's Facilities installed in the Public Way. If Company does not repair the site as required herein, the Town shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the costs incurred by the Town at the Town's standard rates, as well as a reasonable administrative fee to coordinate inspections,

reviews and issuance of permits or denials. Upon the receipt of a demand for payment by the Town, Company shall promptly reimburse the Town for such costs. Company shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the Town for each location. The Town's costs shall be a lien on the property and shall be collectible in the same manner as are Town taxes or by suit at law.

5.1. Location List; Annual Certification. On the first anniversary of the Effective Date, Company shall furnish to the Town a list indicating the location(s) of each of its Small Wireless Facilities in the Public Way, and shall update that list annually. Company shall also provide annually, from the date of this Use Agreement, an updated "as-built" map clearly indicating each Facility, which shall specifically identify the owner of underlying Pole or other support structure (*i.e.*, Company or Pepco). Also, a construction plan shall be provided annually, from the date of this Use Agreement, specifically describing, through maps, illustrations, diagrams, construction drawings and written description, construction or other significant work planned for the following calendar year. Each year on or before July 1, Company shall submit an affidavit to the Town which shall list, by location, all Small Wireless Facilities it owns or operates within the Town's Public Way, and shall certify: (1) each such installation that remains in use; (2) such in-use facility remains covered by required insurance; (3) each such installation has been properly maintained over the last 12 months, and (4) each such installation which is no longer in use.

5.2. Professional Certification. Prior to installing any new Attachment, or modifying any existing Attachment in a manner resulting in additional weight or volume being placed on a Pole, and unless otherwise waived in writing by the Town, as part of the Company's permit application process and at Company's sole expense, and prior to installing any new Pole or other support structure, a qualified and experienced professional engineer must certify that Company's Facilities will be attached to the identified Poles or new Poles or other support structures will be installed, in the correct locations and in compliance with the Applicable Standards, the Town's permit conditions, and the specifications set forth in the Company's application. The Town may require Company's professional engineer to conduct a post- construction inspection that the Town will verify by means that it deems to be reasonable, certifying that the proposed Attachments were made, or new Poles installed, in compliance with the Applicable Standards, the Town's permit conditions, and the specifications set forth in the Company's application.

5.3. Damage to Public Way. Whenever the installation, removal or relocation of Company's Facilities is required or permitted under this Use Agreement, and such installation, removal or relocation shall cause the Public Way to be damaged or harmed in any way, including cosmetic damage, Company, at its sole cost and expense, shall promptly repair and return the Public Way in which the Facilities are located to a safe and satisfactory condition in accordance with applicable Laws. If Company does not repair the site as just described, then the Town shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the proposed costs to be incurred or the actual costs incurred by the Town at the Town's standard rates, except that for repairs needed to protect public health or safety, the Town can proceed with the repair on an emergency basis after providing Company with prior notice. Upon the receipt of a demand for payment by the Town, Company shall promptly reimburse the Town for such costs. The Town's costs shall be a lien on the property and shall be collectible in the same manner as are Town taxes or by suit at law.

6. SPECIFICATIONS.

6.1. **Installation.** When a permit is issued pursuant to this Use Agreement, Company's Small Wireless Facilities and other Equipment shall be installed and maintained in accordance with the plans and specifications approved by the Town. Company shall submit to the Town an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Equipment, (2) the specific proposed location(s), dimensions, and height of such Equipment (including specific identification of each Attachment to a Company-installed or third-party Pole or other structure located in the Public Way); (3) the proposed type of construction materials for all structures, and (4) any other details that the Town may reasonably request which are also applicable to other entities installing facilities in the Public Way.

6.2. **Approval by Town.** Company shall not attach, install, maintain, or operate any Small Wireless Facilities in or on the Public Way until plans for such work have been approved by the Town, and all necessary permits have been properly issued. Any significant deviation from the installation plan as set forth in the application (including, for example, a change of node location) made in the course of construction shall require the written consent of the Town, upon which the Town shall act promptly, and may require modification of an existing, or issuance of a new, permit. Approval of plans and specifications and the issuance of any permits by the Town shall not release Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Company shall be responsible for notifying the Town and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected Town-approved permits, as may be necessary.

6.3. **Maintenance of Facilities.** Company shall, at its own expense, make and maintain its Attachment(s) and Facilities in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Use Agreement to the contrary, Company shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards. Company shall use its commercially reasonable efforts to coordinate construction and maintenance of its Facilities with the Town to minimize unnecessary disruption. Prior to commencing construction, installation or maintenance activities, Company shall acquire all required Town permits. Company shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the Town gives Company written notice of a failure by Company to maintain its Facilities, Company shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

6.4. **Tagging; Access to Records.** Company shall Tag all of its Attachments to Poles and other support structures, as specified by the Town and applicable Federal and State regulations, which will allow for ready identification of the type of Attachment and its owner. The Town may periodically inspect Company's Facilities to ensure they are tagged with approved permanent identification markers. The Town shall have the right, upon reasonable notice, to access and inspect the Company's books and records related to its Facilities in the Town, to confirm compliance with this Use Agreement.

6.5. **RF Emissions.** Company is solely responsible for the radio frequency ("RF") emissions emitted by its Small Wireless Facilities and associated Equipment and their compliance with applicable FCC rules. Company is jointly responsible for ensuring RF exposure from its emissions, in combination with the emissions of all other contributing sources of RF emissions, is within the limits permitted under all applicable rules of the FCC. To the extent required by FCC rules,

Company shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.

6.6. Protective Equipment. Company and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

6.7. Maximum Permissible Exposure Report. Within 30 days of its delivery to Montgomery County ("County"), Company shall furnish the Town a copy of any report to the County concerning RF emissions that relates, in whole or in part, to Company's Facilities located in the Town. Within thirty (30) days of Company's submission to the FCC of any reports on maximum permissible exposure to RF emissions relating, in whole or in part, to Company's Facilities in the Town, Company shall submit a copy of that report to the Town. Failure to provide the report or failure to comply, in a timely manner, with FCC standards for limiting human exposure to radio frequency emissions shall be an event of default.

6.8. Emergency Contact Information. Company shall provide emergency after-hours contact information to the Town to ensure proper notification in case of an Emergency. Information will include 24/7 telephone and cell phone information, and a list of duty managers by district and escalation procedures. Information must be updated by Company if the information changes, and Company will re-report the information no less than every 3 months from the date of this Agreement.

6.9. Violation of Specifications. If Company's Facilities, or any part of them, are installed, used, or maintained in violation of this Use Agreement, and Company has not corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from the Town, the provisions of Section 13 shall apply. When the Town believes, however, that such violation(s) pose an Emergency, the Town may perform such work and/or take such action as it deems necessary without first giving written notice to Company. As soon as practicable afterward, the Town will advise Company of the work performed or the action taken. Company shall be responsible for all actual and documented costs incurred by the Town in taking action pursuant to this Section. Company shall indemnify the Town for any such work. The Town's costs shall be a lien on the property and shall be collectible in the same manner as are Town taxes or by suit at law.

7. INDEMNIFICATION AND WAIVER.

7.1. Indemnification by Company. Company shall indemnify, defend and hold harmless the Town, its elected/appointed officials, departments, employees, agents and representatives from any and all claims, demands, suits and actions, including attorneys' fees and court costs connected therewith, brought against the Town, its elected/appointed officials, departments, employees, agents or representatives and arising from Company's use of the Public Way, the installation, operation or maintenance of its Facilities, or any act or omission of Company, its agents, officers or employees related thereto.

7.2. Waiver of Claims. Company shall use the Public Way at its own risk and the Town shall not be responsible for any damages thereof due to any cause. Neither the Town nor any other user of the Public Way shall be liable to Company for any interruption of Company's services, including but not limited to the failure of Company's equipment to perform as intended, arising in any manner. Company waives any and all claims, demands, causes of action, and rights it may assert against the Town on account of any loss, damage, or injury to any of its Facilities or any loss or degradation of any Communication Services provided over those Facilities.

7.3. Waiver of Punitive and Consequential Damages. Both parties hereby waive the right to recover punitive and consequential damages from the other party; however, this provision does not apply to indemnity.

7.4. Enforcement. The Town shall be entitled to an award of its expenses, including reasonable attorney's fees, incurred in enforcement of this Use Agreement.

8. ENVIRONMENTAL. Company shall protect, defend, indemnify, and hold the Town harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from Company's occupancy, use, development, maintenance, or restoration of the Public Way or installation operation or maintenance of its Facilities, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary Town response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, Company's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. Notwithstanding the foregoing or any other provision in this Agreement, Company shall not be liable or responsible for any environmental condition, including the release of Hazardous Substances, that existed before the commencement of Company's activities under this Agreement, or that otherwise does not result from the activities of Company.

9. GOVERNMENTAL IMMUNITY. No provision of this Use Agreement is intended, or shall be construed, to be a waiver for any purpose by the Town of any applicable governmental immunity State or limits on liability. No indemnification provision contained in this Use Agreement under which Company indemnifies the Town shall be construed in any way to limit any other indemnification provision contained in this Use Agreement.

10. INSURANCE.

10.1. Company shall obtain and maintain at all times during the term of this Use Agreement, Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Company in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and with respect to the Commercial General Liability policy, in an amount not less than Three Million Dollars (\$3,000,000) in the annual aggregate for each personal injury liability. Such insurance shall contain a waiver of the right of subrogation against the Town. The Town shall be named an additional insured party. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Town has received at least thirty (30) days' advance written notice of such cancellation or change. Company shall be responsible for notifying the Town of such change or cancellation. Prior to the commencement of any work pursuant to this Use Agreement, Company shall file with the Town proof that the required insurance has been obtained.

10.2. **Insurer Criteria.** Any insurance provider of Company shall be admitted and authorized to do business in the Commonwealth of Maryland and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

11. NOTICES.

11.1. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

If to the Town:

Town Manager
Town of Garrett Park
P.O. Box 84
Garrett Park, Maryland 20896

If to the Company:

11.2. **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

12. ASSIGNMENT. Company shall not assign its rights or obligations under this Use Agreement, nor any part of such rights or obligations, without the prior written consent of the Town, which consent shall not be unreasonably withheld. The parties agree that all obligations of the Company as set forth herein shall be binding upon the permitted assigns.

13. TERMINATION AND DEFAULT.

13.1. **Default.** An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Company if Company shall breach any material term or condition of this Use Agreement; or Company shall fail to perform, observe or meet any material covenant or condition made in this Use Agreement; or at any time, any representation, warranty or statement made by Company herein shall be incorrect or misleading in any material respect.

13.2. **Remedies.** Upon the occurrence of any one or more of the Events of Default, Town, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon a bond for any fees, costs, expenses or penalties that Company has not paid, and in addition, at its option, the Town may terminate this Use Agreement upon providing notice to Company, provided, however, the Town may take such action or actions only after first giving Company written notice of the Event of Default and a reasonable time within which Company may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30)

calendar days, except that the period of time shall not be less than ten (10) calendar days for any monetary amounts past due and owing by Company to the Town, or for failure to maintain adequate insurance or bonds, as provided for herein.

13.3. Removal Due to Termination or Abandonment. Following the termination of this Use Agreement for any reason, or in the event Company ceases to operate and abandons the Network, Company shall, within one hundred twenty (120) days, at its sole cost and expense, remove all of its Facilities from the Public Way and restore the area affected by its Facilities to its condition at the commencement of this Use Agreement, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Company to the Public Way or the adjacent property, or as otherwise required by the Town. If not so removed within that time period, the Town shall have the right to remove Company's Facilities, and Company agrees to pay the actual and documented cost thereof, within forty-five (45) days after it has received an invoice from the Town.

14. MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

14.1. Nonexclusive Use. Company understands that this Use Agreement does not provide Company with exclusive use of the Public Way and that the Town shall have the right to permit other providers of the same, similar or other services to install equipment or devices in the Public Way. The Company understands that other governmental or quasi-governmental agencies, public utilities, franchisees and other similar entities may conduct activities, such as excavation, construction, demolition and installation of other facilities in the public right-of-way. The Company agrees that the Town shall not be responsible for any damage caused by the aforesaid entities to the Attachments and other Facilities installed by Company pursuant to this Use Agreement;

14.2. Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

14.3. Contacting Company. Company shall be available to the staff employees of the Town twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of Facilities. The Town may contact _____ at telephone number _____ regarding such problems or complaints.

14.4. Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Maryland. If suit is brought by a party to this Use Agreement, the parties agree that any lawsuit shall be brought in either State or Federal court of competent jurisdiction and venue in Maryland.

14.5. Change of Law. If any Laws that govern any aspect of the rights or obligations of the parties under this Use Agreement shall change after the Effective Date and such change preempts any aspect of such rights or obligations as inconsistent with the then-effective Laws, then the parties agree to promptly amend or replace this Use Agreement as reasonably required to accommodate and/or ensure compliance with any such change in Law, provided, however, that if such change in Law deprives either party of a substantial benefit of its bargain under this Use Agreement, then such party shall have the right to terminate this Use Agreement by providing notice to the other party.

14.6. **Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

14.7. **Representations and Warranties.** Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform that Party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

14.8 **Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9. **Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

14.10. **Duties Survive.** The duties described in this Use Agreement, including but not limited to indemnity, shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this license under seal, with the express intent of making a specialty, on this ____ day of _____, 202__.

COMPANY:

TOWN OF GARRETT PARK

(SEAL)

By:

(SEAL)

Barbara B. Matthews, Town Manager

Appendix A Definitions

Affiliate: When used in relation to Company, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Company.

Applicable Standards: Means all applicable engineering and safety standards governing the installation, maintenance, operation of Facilities and the performance of all work in or around Poles and the Public Ways and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Federal Communication Commission (“FCC”) (including but not limited to radio frequency emission standards) and the Occupational Safety and Health Administration (“OSHA”), and the provisions of the Town’s Right-of-Way regulations, building and zoning codes, each of which is incorporated by reference in this Agreement, and other reasonable safety and engineering requirements of the Town or any Federal State or County authority with jurisdiction over Poles or the Public Ways.

Attachment(s): Means Small Wireless Facilities that are placed directly on Poles, including radios, antenna, and associated cables and hardware, as approved in writing by the Director of Public Works and filed with the Department of Public Works prior to their placement on Poles.

Authorizations: Means the applicable permissions Company must obtain to deploy or operate the Network and/or provide Communications Services, which may include franchise or right-of-way use agreements; licenses, permits, zoning approvals; variances, exemptions, grants of authority to use private rights of way and/or easements or facilities, agreements to make attachments to poles, ducts, conduits, manholes, and the like; and any other applicable approval or authorization of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any applicable requirement by a governmental authority for the engagement in a business or enterprise or the provision of services.

Base Station: Means fixed communications equipment for reception and/or transmission of mobile services, such as microcell antennas and associated equipment (amplifiers, connective cabling, batteries), to support the facility.

Communication Services: Means wireless transmission and transport of personal wireless services and private mobile service, as those terms are defined in 47 U.S.C. §332, as amended from time to time, that are provided by Company or its Affiliates using the Network pursuant to, and authorized by, Federal or State law.

County: Means Montgomery County, Maryland.

Emergency: Means a situation that, in the reasonable discretion of the Town or Company, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.

Equipment: Means the optical converters, power amplifiers, radios, multiplexers, microcells, remote radio heads, antennas, cables, wires, meters, pedestals, power switches, and related equipment, whether referred to singly or collectively, to be installed or operated by Company hereunder.

Facilities: Means Small Wireless Facilities, Equipment, and any Pole or other support structure that is installed or operated by Company in or on any Public Way.

FCC: Means the Federal Communications Commission or any successor federal agency.

Law or Laws: Means any and all applicable and lawful statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Town, County, State, FCC, any other agency, department or branch of the Federal Government, or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

Company: Means the Company, and its lawful successors, permitted assigns and transferees, and may also be referred to in conjunction with the Town as the Party, Other Party, or Parties collectively.

Network: Means all of the Facilities owned or operated by Company and located within the Town.

Pedestals/Vaults/Enclosures: Means above or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.

Pole: Means a pole whether owned or controlled by the Company, or a third party and capable of supporting Attachments for Small Wireless Facilities.

Public Way: Means the space in, upon, above, along, across, and over the public rights-of-way and streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lands, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the Town. This term shall not include (a) any County, State, or Federal rights-of-way or any property owned by any person or entity other than the Town, except as provided by applicable Laws or pursuant to any agreement between the Town and any such person or entity, or (b) any property owned by the Town, such as a park or property on which Town buildings are located, that is not a public right-of-way.

Small Wireless Facility: Means each of the Company's Equipment and Facilities that satisfies the definition of "small wireless facilities" in the FCC's rules, 47 CFR Section 1.6002(l).

Standard	County Provisions	Current Town of Garrett Park Code Provisions
Replacement tower (replacing a pole)	Limited use – administrative approval (but waiver available, with hearing); set back 30 feet from house; within 2 feet of prior location; no taller than existing, plus 10 feet; 150 feet from nearest antenna of same operator; at intersections and away from front doors when feasible (or provide affidavit)	Must be set back 5’ from driveway aprons; cannot confront a driveway apron; cannot otherwise interfere with use of the right-of-way; cannot interfere with health of trees; allowed up to 50’ or 10% taller than adjacent structures (or no more than 10% above prior height), whichever is greater; be on the same side of the street as the nearest power line
New tower	Conditional use – public hearing required; setback 30 feet from house (unless lesser setback allowed by OZAH); height up to 50 feet, as approved by OZAH; located to minimize visual impact compared to possible alternative locations; OZAH may impose visual mitigation options	Same standards apply, as those for replacement towers; and must be set back 1,000’ from other towers
Design standards (for replacement and new towers)	Antennas must meet Dimension Standard A (see table below); be concealed in enclosure of same color as pole, at a minimum height of 15 feet, and parallel with tower; replacement tower must be same color as pre-existing pole; no exterior wiring, or wiring enclosed in a shielded conduit; tower must include replacement streetlight if the pre-existing pole had a streetlight; design of a replacement tower in the public right-of-way must be approved by DOT; equipment cabinets must not exceed 12 cf and, if used to support antennas on a replacement streetlight pole, must be installed in the tower base or at ground level; equipment cabinet must be same color or pattern as the preexisting tower and may be a stealth design; signs or illumination are prohibited; noise level must comply with County Code	Antennas must be 3 cf or less; no more than 5 per pole/tower; equipment boxes must be 28 cf or less; comply with FCC RF standards; be located at least 15’ above the ground; designed to minimize visual impact; cable must be concealed
New antenna on existing pole	Accessory use – administrative approval, provided design standards are met (below)	Same standards apply, as those for replacement and new towers
Design standards (for antenna on existing poles)	Antennas must meet Dimension Standard A; be in an enclosure of the same color or pattern as the existing structure; installed at a minimum height of 15 feet; and at least 30 feet from a dwelling	Same standards apply, as those for replacement and new towers

County Antenna Dimension standards:

Standard	Maximum Length on Any Side (in feet)	Maximum Volume (in cubic feet, excluding any equipment cabinet)
A	4 feet 2 inches	6 cubic feet
B	4 feet 2 inches	46 cubic feet
C	6 feet	30 cubic feet
D	9 feet	13 cubic feet
E	15 feet	1 cubic foot





Attachment 4



Attachment 4



Attachment 4



Attachment 4



Attachment 4

