

**FAIR HAVEN BOROUGH COUNCIL  
REGULAR MEETING AGENDA  
JULY 26, 2021, 7:00 P.M.**

**Will be streamed via Facebook Live through the Borough of Fair Haven Facebook Page**

- 1. Call to Order: pm**
- 2. Salute to the Flag:**
- 3. Moment of Meditation:**
- 4. Sunshine Law Notice:**
- 5. Roll Call:** Councilmembers Chrisner-Keefe Koch McCabe  
McCue Neff Rodriguez
- 6. Proclamations**  
-Overdose Awareness Day
- 7. Workshop Session**  
-Sidewalk Priority  
-NJ American Water's River Road main project update  
-Traffic Control Ordinance amendment
- 8. Public Comment on Agenda Items**
- 9. Approval of Minutes**  
-July 12, 2021 Regular Meeting  
-July 12, 2021 Executive Session
- 10. Old Business**  
**Hearing and Adoption of Ordinances**  
2021-10 Establish Procedures and Standards – Deployment of Small Wireless Facilities in ROW
- 11. New Business**  
**Council Committee Reports**  
**Finance** - Councilwoman Neff  
**Personnel** - Councilwoman Chrisner-Keefe  
**Planning & Zoning** - Councilwoman Koch  
**Parks and Recreation and Communications** - Councilwoman Koch  
**Police, Fire & OEM** - Councilman McCue  
**Engineering and DPW** - Councilman McCue  
**Borough Facilities** - Councilman Rodriguez  
  
**Consent Agenda**  
**Resolutions**  
2021-184 Executive Session: Personnel  
2021-185 Extend Grace Period for 3<sup>rd</sup> Quarter Tax Bills  
2021-186 Chapter 159: Drunk Driving Enforcement Fund  
2021-187 Approve Extension of ILSA for Municipal Court Services  
2021-188 Approve Fire Department Membership Application/Regular Member - Kirstin Felsmann  
2021-189 Authorize Amendment of ILSA with Rumson for Construction Code Services to include Fire Marshal Services  
2021-190 Award Purchase of a 2021 Elgin Street Sweeper to W.E. Timmerman Company, Inc. through the Sourcewell National Cooperative Program  
2021-191 Approve Block Party for Gentry Drive (Third Street to Denise Court) on September 25<sup>th</sup>

2021-192	Approve Temporary Sign Installation for Fair Haven Fire Department (The Outback)
2021-193	Payment of Vouchers
2021-194	Authorize Execution for Deed of Open Space Easement: FH Fields Buffer Restoration
2021-195	Appoint two regular members to the Shade Tree Commission

## **Department Reports**

### **June 2021**

-Municipal Court  
-Police Department

-Budget Status

**12. Good of the Borough - Please stand and identify yourself by clearly stating your name and address for the record** (*Please observe a time limit of three minutes*)

**13. Adjournment**

### **PROCEDURE FOR CITIZEN PARTICIPATION AT COUNCIL MEETINGS**

The Fair Haven Borough Council and the Mayor welcome comments, suggestions and inquiries from residents of Fair Haven. To that end, provision is made for a public discussion period at each meeting. It is listed as:

“Public Discussion” – near the end of the meeting where any topic may be addressed.

You must wait to be recognized by the Mayor. **IDENTIFY YOURSELF BY CLEARLY STATING YOUR NAME AND ADDRESS FOR THE RECORD.** Limit your comments to three (3) minutes. Once a particular topic has been addressed by a member of the public, he/she will not be recognized to talk again on the same topic until all others have been heard a first time.

If you wish to reserve time to speak in advance, you may address your request to Allyson Cinquegrana at 732-747-0241 extension \*221, by noon on the Friday preceding the meeting.

You will **NOT** be recognized, **NOR SHOULD YOU COMMENT OR CARRY ON A DEBATE OR DIALOGUE WHILE BUSINESS OF THE BOROUGH IS BEING ADDRESSED BY MAYOR AND COUNCIL.**

**PLEASE BE ADVISED THAT THERE IS ONLY ONE MEETING SCHEDULED IN AUGUST: AUGUST 16, 2021**

**BOROUGH OF FAIR HAVEN  
COUNTY OF MONMOUTH**

**ORDINANCE NO. 2021-10**

**AN ORDINANCE ESTABLISHING PROCEDURES AND STANDARDS REGARDING  
DEPLOYMENT OF SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY IN THE  
BOROUGH OF FAIR HAVEN**

**WHEREAS**, the wireless telecommunications industry has expressed interest in submitting applications to utilize space in public rights-of-way within the Borough of Fair Haven ("MUNICIPALITY") for the installation of small cell wireless telecommunications facilities (hereinafter "Small Wireless Facilities") in connection with the industry's efforts to expand and/or upgrade existing 4G services and as part of the construction of a nation-wide 5G network; and

**WHEREAS**, the MUNICIPALITY encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while preserving the Borough of Fair Haven's ability to manage public rights-of-way in the overall interests of the public health, safety and welfare; and

**WHEREAS**, the MUNICIPALITY recognizes that as usage of wireless technologies continues to rapidly increase, Small Wireless Facilities will be critical to delivering wireless access to advanced technologies, broadband services and 911 services to residences, businesses, schools and individuals within the Borough of Fair Haven; and

**WHEREAS**, the Borough of Fair Haven recognizes that Small Wireless Facilities often are most effectively deployed in public rights-of-way; and

**WHEREAS**, multiple installations of Small Wireless Facilities within the public right-of-way can impact property values, create traffic and pedestrian safety hazards, impact shade trees where proximity conflicts may require trimming of branches or require removal of roots and create visual and aesthetic blights all of which can negatively impact the quality and character of life within the Borough of Fair Haven; and

**WHEREAS**, the MUNICIPALITY wishes to preserve the aesthetics of the community by encouraging the location of 5G equipment on existing or previously approved infrastructure; and

**WHEREAS**, A September 2018 Ruling and Order of the Federal Communications Commission ("FCC") provides that all local jurisdictions must comply with various restrictions on the exercise of local aesthetic, zoning, public works and fees when dealing with Small Wireless Facility installation siting applications by the effective date of the Order which was January 14, 2019. The FCC Order further provided that all local agencies should be capable of fully implementing its provisions within 180 days of its adoption which was on September 26, 2018. The Order also includes modifications to "shot clocks" which require local governments to approve or deny applications within certain expedited periods of time; and

**WHEREAS**, the Borough of Fair Haven needs to amend its ordinances to address the legal and practical issues that arise in connection with multiple Small Wireless Facility installations deployed in the public rights-of-way; and

**WHEREAS**, in light of the foregoing, this governing body is of the opinion that the adoption of this Ordinance and its immediate implementation are in the best interest of the MUNICIPALITY and the health, safety and welfare of its residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED** by the Members of Council of the Borough of Fair Haven, in the County of Monmouth, State of New Jersey, as follows:

## **Section One. Definitions.**

- A. All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.L. 73-416, as amended by various statutory enactments including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104, are incorporated herein and are made apart hereof.
- B. All definitions of the words, terms and phrases that are set forth in the portion of the Middle-Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, as codified in 47 USC §455, are incorporated herein and are made a part hereof.
- C. All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et. seq.*, are incorporated herein and are made apart hereof.
- D. All of the definitions of words, terms and phrases that are set forth in the Code of Federal Regulations at 47 C.F.R. §1.6002, as amended, are incorporated herein and are made a part hereof.
- E. In addition to the foregoing, the following words, terms and phrases shall have the meanings indicated unless an alternate meaning clearly is discernable from the context in which the word, term or phrase is used:

### ***Personal Wireless Services***

"Personal Wireless Services," as defined in 47 U.S.C. §332(c)(7)(C), as supplemented and/or as amended.

### ***Public Right-of-Way***

The surface, the airspace above the surface and the area below the surface of any street, road, highway, lane, alley, boulevard or drive, including the sidewalk, shoulder and area for utilities owned by the Borough of Fair Haven within an easement to the public or other easement owned by the Borough of Fair Haven.

### ***Small Wireless Facility***

"Small Wireless Facility," as defined in the Code of Federal Regulations at 47 C.F.R. §1.6002(1), as supplemented and/or as amended.

### ***Smart Pole***

A decorative utility pole that conceals, disguises or camouflages one or more Small Wireless Facility installation(s) and may include other features such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A Smart Pole must allow for multiple occupants and allow space for municipal use for other services and/or equipment. Smart Poles shall neither have external latches, external hinges, nor external cabling. The pole should be made of an inherently rust-resistant material (ie. aluminum alloys or stainless steel).

### ***Utility Pole***

A wooden or metal pole that is used by public utilities to support electrical wires, telephone wires, coaxial cables, fiber optic cables and like and similar appurtenances.

- F. In the event that a term, word or phrase is not defined in any of the aforementioned statutes and is not otherwise defined herein then that term, word or phrase shall have its common, ordinary meaning.

## **Section Two. Small Wireless Facility Siting Permit Required; Consent to Use Rights-of-Way**

**Required.**

- A. No person shall place a Small Wireless Facility in any right-of-way without first filing a Small Wireless Facility siting permit application, in the form specified herein and in accordance with the procedures specified herein, with the Fair Haven Borough Clerk and obtaining a siting permit therefore, except as otherwise may be provided in this ordinance. Upon approval of a siting permit application, the siting permit authorizing placement of a Small Wireless Facility in a public right-of-way shall not be issued by the Fair Haven Borough Clerk to any Applicant unless:
1. All siting permit application fees and escrow fees, as established herein, have been paid; and
  2. All other governmental permits or other governmental approvals that are required for the deployment(s) proposed by the Applicant's siting permit application under the New Jersey Uniform Construction Code Act, N.J.S.A. 52:27D-119, et. seq., and the administrative regulations adopted thereunder, Chapter 382, Article V, Street Openings, of the Code of the Borough of Fair Haven, and by any other applicable federal, state or municipal law have been issued by the appropriate issuing authority therefore to the Applicant and the Applicant has supplied copies of such other permits or approvals to the Fair Haven Borough Clerk for inclusion with the Applicant's application documents; and
  3. The Applicant has entered into a "Right-of-Way Use Agreement," the approved form of which is set forth in Appendix "B" to this ordinance, with the MUNICIPALITY. The approved form of "Right-of-Way Use Agreement" may from time-to-time be revised, supplemented or otherwise amended or replaced. All such revisions, supplements, amendments or replacements shall be approved by Resolution of the Borough of Fair Haven Council. The Fair Haven Borough Clerk shall maintain on file the currently approved Right-of-Way Use Agreement version and shall provide a copy to all siting permit applicants. Minor deviations to the terms and conditions that are set forth in the approved form of Right-of-Way Use Agreement may be approved by the Fair Haven Borough Council at the time that it grants consent to use a right-of-way to a siting permit Applicant.
- B. No siting permit authorizing placement of a Small Wireless Facility in a public right-of-way shall be issued to any Applicant unless the Fair Haven Borough Council, in the manner prescribed by applicable laws of the State of New Jersey, has granted to the siting permit Applicant its consent to use public rights-of-way within the Borough of Fair Haven. No siting of a Small Wireless Facility shall be permitted within two-hundred (200) feet of another Small Wireless Facility unless it can be established by clear and convincing evidence that co-location on an existing or previously approved Small Wireless Facility is not feasible. Any claims of carriers of technical incompatibility or inability to collocate need to be proven by the carrier, not disproven by the municipality. Responsibility for judging proof of said claims lies solely with the municipality and/or its chosen representative(s).

**Section Three. Installation of New Structures; Installation on Existing Structures.**

- A. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility upon an existing structure in a right-of-way unless the structure is one of the types of Smart Poles that are set forth in Appendix "A" to this ordinance and such Smart Pole specifically is designed to accommodate the reasonable and customary equipment necessary for a Small Wireless Facility installation which will accommodate at least three carriers per Small Wireless Facility deployment.
- B. No Small Wireless Facility shall be installed upon any new structure within any right-of-way

unless the new structure is one of the pre-approved types of Smart Poles that are identified in Appendix "A" to this ordinance. A replacement pole is a new structure. The restrictions on new structures set forth herein shall not apply to new structures to be constructed in the following zoning district: INSERT ZONE IF APPLICABLE. Appendix "A" to this ordinance from time-to-time may be revised, supplemented or otherwise amended or replaced. All such revisions, supplements, amendments or replacements shall be approved by Resolution of the Fair Haven Borough Council. The Fair Haven Borough Clerk shall provide a copy of Appendix "A" to all siting permit applicants.

- C. No application for a Small Wireless Facility siting permit shall be approved if the application proposes the deployment of a Small Wireless Facility in an area other than those specific locations set forth within the City's Wireless Siting Plan, which can be found on file with the Office of the City Clerk. All Small Wireless Facilities must be placed within a 25 ft. radius of those specific locations set forth on the City's Wireless Siting Plan. No more than one (1) Smart Pole shall be permitted per intersection or block if the Siting Plan calls for the deployment of a Small Wireless Facility at any location other than an intersection, unless otherwise specified within the Wireless Siting Plan. No Smart Poles shall be located within 200 ft. of another.

#### **Section Four. Siting Permit Application Process.**

- A. Application Filing. An application for a siting permit to place one or more Small Wireless Facility within a right-of-way shall be made on forms which shall be available from the Office of the Fair Haven Borough Clerk. The application, along with the required application fee and the required escrow fee, shall be filed with the Fair Haven Borough Clerk. Immediately upon receipt of an application, the Fair Haven Borough Clerk shall provide copies of the application and all supporting documents that were submitted by the Applicant with the application, to the Fair Haven Borough Engineer, the Construction Official and the Fair Haven Borough Solicitor.
- B. Application Form. The Small Wireless Facility siting permit application shall be made by a provider of personal wireless services, or its duly authorized representative as noted in a notarized statement from the provider of personal wireless services on whose behalf the representative is acting, and shall contain the following:
  - 1. The Applicant's name, address, telephone number and e-mail address;
  - 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 general description of the proposed Small Wireless Facility, existing structure and new structure work to be performed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with particular emphasis on those matters, including, but not limited to, subservice utilities likely to be affected or impacted by the work proposed along with a description of such other governmental permits or approvals as may be required by applicable law with respect to the proposed installation(s) and a description of such other permits or approvals for which the Applicant has applied;
  - 4. Authorization for any consultant acting on behalf of the Applicant to speak with the MUNICIPALITY, or a designee of the MUNICIPALITY, on the area of consultation for the Applicant even if the Applicant cannot be available;
  - 5. Verification from an appropriate professional that the Small Wireless Facility shall comply with all applicable federal, state and local laws, administrative regulations and codes;

6. The Applicant shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The Applicant shall further certify that they will encourage, manage and coordinate the location and placement of any interested carrier's equipment on their structure.
- C. An Applicant seeking to deploy a network of Small Wireless Facilities, all of which are to be located in rights-of-way, may file a batched application for up to twenty-five (25) Small Wireless Facilities and receive a single siting permit for multiple Small Wireless Facilities.

**Section Five. Procedure on Permit Application; No Exclusive Rights.**

- A. The MUNICIPALITY shall review the application for a Small Wireless Facility siting permit in light of its conformity with the provisions of this Ordinance, and shall approve a siting permit on nondiscriminatory terms and conditions subject to the following requirements:
1. Within ten (10) days of receiving an Application, the Fair Haven Borough Clerk shall determine and notify the Applicant:
    - (a) Whether the Application is complete;
    - (b) If the Application is incomplete, what specific information is missing; and
    - (c) Whether the deployment of the Small Wireless Facilities as proposed requires the Applicant to apply for other permits, such as a street opening permit or construction permit, for which the Applicant has not yet applied. No Small Wireless Facility siting permit application shall be deemed complete until the Applicant has applied for all other permits and approvals required by all other laws and regulations that are applicable to the Applicant's proposed Small Wireless Facility deployment.
- B. The MUNICIPALITY shall make its final decision to approve or deny the Application within the following timeframes:
- (a) Sixty (60) days from the submission of a complete application to install a Small Wireless Facility upon one or more existing structures.
  - (b) Ninety (90) days from the submission of a complete application to install a Small Wireless Facility upon one or more new structures.
  - (c) Ninety (90) days from the submission of a complete batched application to install Small Wireless Facilities upon both existing and new structures.

The timeframes described above by which an application shall be either approved or denied may be extended by mutual consent of the Applicant and Borough of Fair Haven. Such consent shall be set forth on a form for such purposes which shall be available from the Office of the MUNICIPALITY Clerk. Such consent on behalf of the Borough of Fair Haven shall be exercised by the Mayor in his/her reasonable discretion.

- C. The Fair Haven Borough Clerk shall notify the Applicant in writing of the final decision, and if the Application is denied Specify the basis for denial; and Cite such specific provisions, as may be recommended by the MUNICIPALITY Solicitor, from federal, state, or local laws, administrative regulations or codes as to why the Application was denied.
- D. Notwithstanding an initial denial, the Applicant may cure any deficiencies identified by the Borough of Fair Haven within thirty (30) days of the denial without paying an additional

application fee, provided the Fair Haven Borough Clerk shall approve or deny the revised application within thirty (30) days of receipt of the amended application which shall be limited to the deficiencies specified in the original notice of denial.

- E. If the Borough of Fair Haven fails to act upon an application within the timeframes prescribed by this section, the Applicant may provide written notice to the Borough of Fair Haven that the application review and decision period has lapsed. Upon receipt of such notice, the Fair Haven Borough Council, by resolution adopted no later than its second regularly scheduled public meeting next following receipt of the notice, shall either deny the application or direct that the siting permit shall be approved and issued. Nothing in this paragraph is intended in any way to impact any other right or remedy that may be available to the Applicant under applicable federal or state law if the Borough of Fair Haven fails to act upon an application within the timeframes prescribed by this section.
- F. A siting permit from the Borough of Fair Haven authorizes an Applicant to undertake only certain activities in accordance with this ordinance. No approval or consent granted, or siting permit issued, pursuant to this ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use any public right-of-way within the Borough of Fair Haven for the delivery of telecommunications services or for any other purpose.

#### **Section Six. Duration.**

No siting permit issued under this ordinance shall be valid for a period longer than twelve (24) months unless construction has actually begun and continuously and diligently is pursued to completion. Upon written request from the Applicant, the Mayor, upon consultation with the Construction Official, may extend the siting permit for a period of up to twelve (12) months so long as construction has begun at the time that the Applicant's request for an extension is made.

#### **Section Seven. Routine Maintenance and Replacement.**

A Small Wireless Facility siting permit shall not be required for:

- A. Routine maintenance of a Small Wireless Facility.
- B. The replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight and height to the Small Wireless Facility that is being replaced.
- C. Provided, however, that on a location where the Borough of Fair Haven and/or another provider has placed equipment or facilities, any routine maintenance or replacement that is done shall not occur until written authorization from the Borough of Fair Haven and/or the other provider, as the case may be, to proceed is provided to the Borough of Fair Haven, which authorization to proceed shall not unreasonably be withheld by the Borough of Fair Haven and/or the other provider.
- D. Provided further that if the replacement of a Small Wireless Facility with another Small Wireless Facility includes replacement of the structure to which the Small Wireless Facility is attached then an application for a siting permit shall be required.

#### **Section Eight. Application Fees.**

- A. All applications for approval and issuance of a Small Wireless Facility siting permit pursuant to this ordinance shall be accompanied by a fee as follows:
  - 1. For applications that do not include the installation of any new structures within a right-of-way the application fee shall be \$500.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).



2. For applications that include the installation of a new structure within a right-of-way the application fee shall be \$1000.00 for up to five (5) Small Wireless Facilities with an additional \$100.00 for each Small Wireless Facility beyond five (5).

**Section Nine. Escrow Fee for Third-Party Professionals and Consultants.**

- A. In addition to the application fee, all applications for approval and issuance of a Small Wireless Facility siting permit shall be accompanied by an escrow fee as follows:
  1. For applications whose proposed Small Wireless Facility deployment(s) will not require a street opening permit pursuant to Chapter 382, Article V of the Code of the Borough of Fair Haven: \$5,000.00.
  2. For applications whose proposed Small Wireless Facility deployment(s) will require a street opening permit of the Code of the Borough of Fair Haven: \$7,500.00.
- B. The escrow account deposits are required to pay for the costs of professional services, including engineering, planning, legal and other third-party professional consulting expenses connected with the review of submitted materials, including any traffic engineering review or other special analyses related to the Borough's review of the materials submitted by the Applicant and the preparation of any reports or any necessary legal agreement regarding rights-of-way use. An Applicant is required to reimburse the Borough of Fair Haven for all fees, costs and expenses of third-party professionals and consultants incurred and paid by the Borough of Fair Haven for the review process of a Small Wireless Facility siting permit application, such as, but not limited to:
  1. Professional fees for reviews by third-party professionals or consultants of applications, plans and accompanying documents;
  2. Issuance of reports or analyses by third-party professionals or consultants to the Borough of Fair Haven setting forth recommendations resulting from the review of any documents submitted by the Applicant;
  3. Charges for any telephone conference(s) or meeting(s), including travel expenses, requested or initiated by the Applicant, the Applicant's attorney or any of the Applicant's experts or representatives;
  4. Review of additional documents submitted by the Applicant and issuance of reports or analyses relating thereto;
  5. Review or preparation of right-of-way use agreements, easements, deeds, right-of-way municipal consent ordinances or resolutions and any and all other like or similar documents; and
  6. Preparation for and attendance at all meetings by third-party professionals or consultants serving the Borough of Fair Haven, such as the Borough Attorney, Borough Engineer and Borough Planner or other experts as required.
- C. The escrow account deposits shall be placed in a separate account by the Borough of Fair Haven's Chief Financial Officer at the request of the Fair Haven Borough Clerk and an accounting shall be kept of each Applicant's deposit. Thereafter:
  1. All third-party professional or consultant fees, costs, expenses and charges shall be paid from the escrow account and charged to the applicant;

2. Upon either final denial of a Small Wireless Facility siting permit application or upon issuance of a Small Wireless Facility siting permit, any moneys not expended for third-party professional, or consulting services shall be returned to the Applicant within 90 days upon written request by the Applicant and as authorized by the Fair Haven Borough Council;
3. If at any time during the application review process 75% of the money originally posted shall have been expended, the Applicant shall be required to replenish the escrow deposit to 100% of the amount originally deposited by the Applicant;
4. No Small Wireless Facility siting permit application shall be considered complete until such time as the required escrow fee has been posted to guarantee payment of third-party professional or consultant fees, costs, expenses and charges;
5. All payments charged to the escrow deposit shall be pursuant to vouchers from the third-party professionals or consultants stating the hours spent, the hourly rate and the fees, costs, expenses and charges incurred;
6. Third-party professionals and consultants submitting charges pursuant to this section shall be permitted to charge for such services at the same rates as they would charge their private clients for like or similar work provided that:
  - (a) Professional fees are billed at rates that do not exceed such professional fees as are customarily charged by other like professionals and consultants performing similar work within Monmouth County; and
  - (b) Out-of-pocket costs, expenses and charges are billed on a dollar-for-dollar basis with no mark-up being permitted;
7. The Borough of Fair Haven shall render a written final accounting to the Applicant on the uses to which the escrow deposit was put. The written final accounting shall include copies of all vouchers that were submitted by third-party professionals and consultants and paid by the Borough of Fair Haven.

#### **Section Ten. Municipal Access to New Structures.**

An Applicant whose siting permit includes the installation of any new Smart Pole structure of any of the types that are included in Appendix "A" to this ordinance shall provide the Borough of Fair Haven with access to any of the technological features that are a component the new Smart Pole structure such as, for example, public access Wi-Fi, 911 call service or security cameras, before the Applicant offers such access to any other person or entity. Should the Borough decide to utilize any such technological features then the Borough of Fair Haven, on an annual basis, shall reimburse the Applicant or the subsequent owner of the structure, the costs, on a dollar-for-dollar basis, of providing the Borough with such access. Such costs shall be limited to the costs of providing electricity to the components used by the Borough of Fair Haven and the costs of any repairs required to be made to the components used by the Borough, unless the repair costs are necessitated by the acts of the Applicant or subsequent owner of the structure, without regard to whether such acts are negligent or intentional.

#### **Section Eleven.**

All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed.

#### **Section Twelve.**

This Ordinance shall take effective immediately upon final passage and publication as provided by law.

Introduced: 7/12/2021

Adopted:

Attest:

Approve:

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Allyson M. Cinquegrana, RMC/CMR  
Borough Clerk

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Benjamin J. Lucarelli, Mayor

APPENDIX A  
(List of Approved Smart Poles)

## APPENDIX B

(Form of Approved Small Wireless Facility Right-of-Way Agreement)

### SMALL WIRELESS FACILITY RIGHT-OF-WAY USE AGREEMENT

This Right-Of-Way Use Agreement ("Agreement") is made and entered into on , 20 by and between the Borough of Fair Haven ("MUNICIPALITY"), a New Jersey Municipality, having its municipal offices at 748 River Road, Fair Haven, New Jersey 07704 and APPLICANT ("Licensee"), having a mailing address at APPLICANT ADDRESS.

Throughout this Agreement the Borough of Fair Haven and Licensee each may be referred to as a "Party" and collectively may be referred to as the "Parties."

#### WITNESSETH

**WHEREAS**, the Borough of Fair Haven is a municipality duly formed, organized and existing in accordance with the laws of the State of New Jersey; and

**WHEREAS**, the Borough of Fair Haven possesses and exercises control over various permanent rights-of-way that are, or are planned to be, utilized for streets, roads and highways and those rights-of-way are depicted on the current Borough Tax Map and/or other maps and documents of public record; and

**WHEREAS**, N.J.S.A. 48:17-8 provides that any telegraph or telephone company organized under the laws of any state, or of the United States, may erect, construct and maintain the necessary poles, wires, conduits and other fixtures for its lines, in, upon, along, over and under any public street, road or highway, upon first obtaining the consent in writing of the owner of the soil to the erection of such poles and such consent previously has been provided to such companies for the erection of such poles; and

**WHEREAS**, various public utilities that are subject to the jurisdiction of the New Jersey Board of Public Utilities such as, by way of example and not by way of limitation, ELECTRICT COMPANY, have erected and maintain utility poles within the public rights-of-way in the Borough for use in connection with supplying and distributing electricity, telephone services, cable television, telecommunication services and/or other utilities pursuant to consent previously granted by MUNICIPALITY; and

**WHEREAS**, Licensee does not presently have the right to maintain utility poles in any municipal right-of-way within the Borough of Fair Haven or to otherwise use or occupy any municipal right-of-way within Fair Haven for any of its Small Wireless Facilities, as hereinafter defined; and

**WHEREAS**, in accordance with the provisions of N.J.S.A. 48:3-11, et. seq., Licensee has petitioned the MUNICIPALITY for its consent to locate, place, attach, install, operate, control, maintain, upgrade and enhance its Small Wireless Facilities in municipal rights-of-way as well as on utility poles and/or other facilities that are owned by third parties which already are located in municipal rights-of-way pursuant to municipally granted franchises or otherwise; and

**WHEREAS**, N.J.S.A. 48:3-18 provides that any person may enter into a written agreement with any other person owning utility poles erected under municipal consent in any street, highway or other public place for use by the former person and N.J.S.A. 48:3-19 requires that the former person obtain the consent of the municipality for use by the former person of the poles of another if the former person does not have the lawful right to maintain poles in such street, highway or public place; and

**WHEREAS**, as to those utility poles or structures that are owned by third parties and which are located in municipal rights-of-way pursuant to municipally granted franchises or otherwise, Licensee has provided the Borough of Fair Haven with evidence, consisting of written agreements, that it has obtained consent from those third parties to use the utility poles or structures that are owned by those third parties; and

**WHEREAS**, N.J.S.A. 48:3-15 provides that, upon satisfaction of the procedures that are set forth in N.J.S.A. 48:3-11 through N.J.S.A. 48:3-14, consent for use of any street, avenue, park, parkway, highway or other public place may be granted by ordinance and not otherwise; and

**WHEREAS**, the Fair Haven Borough Council adopted Ordinance No. 2021-10 which authorizes the making and execution of this Agreement.

**NOW, THEREFORE**, for and in consideration of the covenants and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Preamble.** All of the statements of the Preamble are repeated and are incorporated herein and are made apart hereof by this reference thereto as if set forth at length.
2. **Definitions.** All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.L. 73-416, as amended by various statutory enactments including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104, are incorporated herein and are made apart hereof.

All definitions of the words, terms and phrases that are set forth in the portion of the Middle-Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, as codified in 47 USC §455, are incorporated herein and are made a part hereof.

All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:550-1, et. seq., are incorporated herein and are made apart hereof.

In the event that a term, word or phrase is not defined in any of the aforementioned statutes and is not otherwise defined by this Agreement then that term, word or phrase shall have its common, ordinary meaning.

"County" means the County of Monmouth in the State of New Jersey. "Municipality" means the Borough of Fair Haven in the County of Monmouth. "MUNICIPALITY" means the Borough of Fair Haven in the County of Monmouth. "Licensee" means NAME OF LICENSEE.

"Public Right-Of-Way" means the surface, the airspace above the surface and the area below the surface of any street, road, highway, lane, alley, boulevard or drive, including the sidewalk, shoulder and area for utilities owned by the Borough of Fair Haven within an easement to the public or other easement owned by the MUNICIPALITY.

"Utility Pole" means a wooden or metal pole that is used to support electrical wires, telephone wires, coaxial cables, fiber optic cables and the like.

3. **Grant of Consent.** In accordance with the provisions of N.J.S.A. 48:3-19, et. seq., and Borough of Fair Haven Ordinance No. 2021-10, and subject to obtaining the permission of the owner(s) of the affected Utility Poles, Fair Haven Borough hereby grants approval and consent to Licensee, its consultants, agents and contractors, to enter upon Public Rights-of-Way within the confines of the Municipality for the purpose of owning, constructing, attaching, operating, maintaining, removing, reattaching, reinstalling, relocating and replacing its Small Wireless Facilities that more particularly are depicted and are described in Exhibit "A," annexed hereto and made a part hereof, upon the Utility Poles that are particularly identified in Exhibit "A," all of which Utility Poles are located in Public Rights-Of-Ways and all of which Utility Poles are owned by third parties. Licensee represents that it has obtained consent from the owners of the Utility Poles to utilize those Utility Poles for the aforementioned purposes. Upon request, Licensee shall furnish the Borough of

Fair Haven with evidence of its Utility Pole attachment agreement(s) made pursuant to N.J.S.A. 48:3-18 and/or N.J.S.A. 14:18-2.9, et. seq. Further, the Borough of Fair Haven hereby grants approval and consent to Licensee, its consultants, agents and contractors, to enter upon Public Rights-of-Way within the confines of the Municipality for the purpose of constructing and owning, such new utility poles or new structures for the purposes attaching, operating, maintaining, removing, reattaching, reinstalling, relocating and replacing its Small Wireless Facilities that more particularly are depicted and are described in Exhibit "A," annexed hereto and made a part hereof. Nothing in this Agreement shall be construed as authorizing Licensee to own, construct, attach, operate, maintain, remove, reattach, reinstall, relocate and/or replace any Small Wireless Facility, Utility Pole or any other structure unless the Licensee first has obtained all permits and other approvals therefore, as required by all applicable laws and regulations. Nothing in this Agreement shall be construed as granting Licensee consent to utilize any rights-of-way over which MUNICIPALITY lacks authority to grant consent such as any right-of-way over which the County or the State of New Jersey have exclusive authority.

4. **Term.** The term of this Agreement shall be ten (10) years, commencing on \_\_\_\_\_, 2021, unless sooner terminated by either Party in accordance with the provisions of this Agreement. The term of this Agreement automatically shall be renewed for three (3) successive terms of five (5) years each on the same terms and conditions as are set forth herein, unless Licensee notifies the Borough of Fair Haven of its intention not to renew not less than sixty (60) days prior to the end of the Term then in effect.

5. **Non-Exclusive License.** This Agreement is a non-exclusive license. It shall not be recorded. Any and all rights granted to Licensee under this Agreement shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of the Borough of Fair Haven to use any and all parts of its Public Rights-of-Way exclusively or concurrently with any other person or entity and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record which may affect the Public Rights-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create or vest in Licensee a real property interest in any land, including any fee, leasehold interest or easement.

6. **Compliance with Laws; Required Permits; Utilities; Maintenance.**

(a) **Compliance with Laws.** Licensee shall comply with all applicable federal, state and municipal laws, administrative regulations, codes, zoning ordinances, ordinances, standards, specifications and requirements relating to the construction, installation, operation, maintenance and control of Licensee's Small Wireless Facilities, appurtenant equipment, structures and utility poles depicted in Exhibit "A," in the designated locations within the Public Rights-of-Way. Licensee shall not attach, install, maintain or operate any Small Wireless Facility within any Public Right-of-Way without a permit therefore first having been issued by the Borough of Fair Haven. Therefore, in the event that Licensee desires to construct, attach, install, maintain or operate any additional Small Wireless Facilities, Utility Poles or structures within a Public Right-of-Way that is not depicted on Exhibit "A" then such construction, attachment, installation, maintenance or operation first shall be approved by a permit therefore issued by the MUNICIPALITY and this Agreement, and Exhibit "A," shall be amended and supplemented accordingly prior to the commencement of such construction, attachment, installation, maintenance or operation of the Small Wireless Facilities, Utility Poles or structures

(b) **Required Permits.** If the attachment, installation, operation, maintenance or location of any Small Wireless facility by Licensee in any Public Right-of-Way requires any permit, including any Fair Haven Borough street opening permit, then Licensee, if required under applicable municipal ordinances, shall apply for the appropriate permit with the appropriate municipal official and shall pay the required fee therefore.

(c) **Utilities.** Licensee shall pay for all utilities used (and connections to said utilities) in connection with the installation, operation and maintenance of its Small Wireless Facilities. Licensee agrees to

take utility access from the nearest possible connection in order to minimize utilization of the Public Rights-of-Way.

(d) **Maintenance.** In the performance and exercise of its rights and obligations under this Agreement, Licensee, at its sole cost and expense, shall maintain its Small Wireless Facilities, its Utility Poles, its structures and any real property utilized to access any of the foregoing in a safe and satisfactory condition as directed by, and to the satisfaction of, Fair Haven, including, but not limited to, removal of any debris generated by Licensee and replacement of any plants, trees or vegetation damaged or destroyed by Licensee. In the event that any of Licensee's Small Wireless Facilities, and appurtenances thereto, its Utility Poles or its structures causes damage to any Public Right-of-Way or interferes with the performance of any of Fair Haven's public duties or other uses of the Public Rights-of-Way, Licensee agrees, upon notice from the Borough of Fair Haven, to promptly commence and complete all necessary repairs to cure any such damage at Licensee's sole cost and expense. If Licensee fails to repair the damage after receiving notice from the Borough of Fair Haven or if an emergency necessitates immediate repair of the damage then MUNICIPALITY, in its sole discretion, may perform the repair work itself in which case Licensee shall reimburse Fair Haven for the cost of the repair work within thirty (30) days after receiving a statement detailing such costs.

7. **Removal and Relocation.** Within 30 days following written notice from the Borough of Fair Haven, the Licensee, at its own expense, shall temporarily or permanently remove, relocate, change or alter the position of any of its Small Wireless Facilities, Utility Poles or structures if the MUNICIPALITY determines that (a) such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Fair Haven improvement in or upon, the Public Right-of-Way; or (b) because the Small Wireless Facilities, Utility Poles or structures are interfering with or adversely affecting proper operation of street lighting, traffic signaling or other poles; or (c) the widening of the Public Right-of-Way necessitates such removal, relocation, change or alteration. In such instance, the Borough of Fair Haven shall cooperate with Licensee to find a replacement location for its Small Wireless Facilities that will provide similar radio frequency coverage as is provided by the Small Wireless facilities to be removed or relocated. Once the emergency condition no longer exists Licensee shall apply for any permit for the work that was performed during the emergency that it would have had to secure for said work prior to performing said work in the absence of the emergency.

8. **Emergent Conditions.** Licensee shall maintain all of its Small Wireless facilities, Utility Poles and structures at Licensee's sole cost and expense. The noncompliance with normally required procedures for securing a required permit shall be excused when Licensee reasonably determines that an emergency exists. If an emergency creates a hazard on the traveled portion of the Public Right-of-Way, then Licensee shall take immediate steps to provide all necessary protection for traffic on the roadway including the use of signs, lights, barricades or flaggers. Licensee shall, as soon as practical, notify the Borough of Fair Haven's Engineer, Construction Official, or their designees, and the Fair Haven Police Department of the emergency, informing them as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. On nights and weekends the Licensee shall notify the Fair Haven Police Department of an emergency if the Fair Haven Borough Engineer and Construction Official are unavailable. If the nature of the emergency is such as to interfere with the free movement of traffic, the Fair Haven Police Department shall be notified immediately, prior to any other action being taken. To the extent that Fair Haven has actual knowledge of the displacement or damage to any of Licensee's Small Wireless Facilities, Utility Poles or structures, it shall inform Licensee upon learning of the same.

9. **Personal Property Owned by Licensee.** All Small Wireless Facilities, Utility Poles and structures covered under this Agreement shall be considered personal property and shall remain the property of and shall be under the dominion and control of the Licensee. Such personal property may not be utilized by any third party without the express prior written consent of Licensee, but Licensee, upon the request of the Borough of Fair Haven and at no cost to Licensee, shall cooperate with any



third party in collocating the third party's equipment upon any Utility Pole or structure upon which Licensee has installed any Small Wireless facility.

**10. Insurance and Indemnity.**

(a) Licensee shall secure and maintain commercial general liability insurance or self-insurance with limits of \$2,000,000 for injury or death on one or more persons in any one occurrence and in the aggregate and \$2,000,000 for damage or destruction in any one occurrence and in the aggregate insuring Licensee as named insured and listing MUNICIPALITY as an included insured on the policies. Fair Haven's included insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Fair Haven, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of the Borough of Fair Haven, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any. Notwithstanding the forgoing, Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Fair Haven as an additional insured, the following conditions apply: (i) MUNICIPALITY shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) MUNICIPALITY shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) MUNICIPALITY shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like. If Licensee elects to self-insure then it or its affiliated parent shall maintain a financial net worth of at least \$100,000,000 and it or its affiliated parent shall provide the Borough of Fair Haven with a certificate of self-insurance along with a copy of its or its affiliated parent's latest financial statement (or a link to an internet web site from which Fair Haven may print a copy of the financial statement) showing a net worth of not less than \$100,000,000 as sufficient evidence to demonstrate its or its affiliated parent's financial ability to self-insure the insurance coverage and limits that are specified in this paragraph 10(a).

(b) Certificates of the insurance required by this paragraph 10, along with the evidence of financial ability to self-insure as described in paragraph (a) above, if applicable, shall be provided to the Borough of Fair Haven within ten (10) days following the effective date of this Agreement and prior to obtaining any permits required under paragraph 6(b). Thereafter, and so long as this Agreement remains executory, Licensee shall provide certificates of insurance or of self-insurance reflecting the requirements of this paragraph to the Borough of Fair Haven within ten (10) days following receipt of a written request from Fair Haven. Production of a certificate of self-insurance always shall be accompanied by the evidence of ability to self-insure that is described in paragraph 10(a) above. Should any policy of insurance on which the Borough of Fair Haven is an included insured be cancelled before the expiration date thereof then Notice of the cancellation shall be provided to the Borough of Fair Haven in accordance with the policy provisions by Licensee or by its affiliated parent or by the insurer.

(c) Licensee agrees to indemnify and hold harmless, Fair Haven, against any claim of liability or loss from personal injury or property damage to the extent directly resulting from or arising out of the negligence or willful misconduct of the Licensee, its employees, contractors or agents, except to the extent such claims or damage may be due to or caused by the negligence or willful misconduct of the Borough of Fair Haven, or its employees, contractors or agents. Fair Haven will provide the Licensee with prompt, written notice of any claim covered by this indemnification and hold harmless provision; provided that any failure of Fair Haven to provide any such notice, or to provide it promptly, shall not relieve the Licensee from its indemnification and hold harmless obligation in respect of

such claim, except to the extent the Licensee can establish actual prejudice and direct damages as a result thereof. Fair Haven shall cooperate with the Licensee in connection with the Licensee's defense of such claim. The Licensee shall defend the Borough of Fair Haven, at the MUNICIPALITY's request, against any claim with counsel of Fair Haven's choosing that is reasonably satisfactory to the Licensee.

(d) The legal liability of the Licensee to Fair Haven and any person for any of the matters that are the subject of the insurance policies required by this paragraph shall not be limited by such insurance policies or by the recovery of any amounts thereunder, however neither Fair Haven nor the Licensee shall be liable to the other for consequential, incidental, exemplary or punitive damages on account of any activity pursuant to this Agreement.

11. **No Waiver of Breach of Remedies.** No waiver by a Party of any breach of this Agreement or of any representation hereunder by the other Party shall be deemed to be a waiver of any other breach by the other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation hereunder by the other Party whether or not the first Party knows of such breach at the time it accepts such performance. No failure or delay by a Party to exercise any right it may have by reason of the default of the other Party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party continues to be so in default. Any remedy that either Party may have by reason of a breach of any provision of this Agreement by the other Party, at all times, shall be preserved and may not be waived.

12. **Mediation of Disputes.** In the event of any dispute concerning the interpretation of the terms of this Agreement or of the obligations of either Party under this Agreement, the Parties shall attempt in good faith to resolve such dispute via consultation between their designated representatives. If such consultation fails to resolve the dispute, then the Parties agree to submit the dispute to mediation. The mediation shall be initiated by one Party serving the other Party with a written demand to mediate. The mediation demand shall include the initiating Party's designation of a mediator. Within fourteen (14) days of receipt of the mediation demand the Party receiving the mediation demand shall either agree to the mediator designated by the other Party or shall provide the other Party with its written designation of a mediator. Thereafter, the designated mediators immediately shall jointly designate a third mediator who shall be either a New Jersey licensed attorney-at-law or a retired judge of the Superior Court of New Jersey. Payment of mediation fees, costs and expenses shall be split evenly amongst the Parties. The mediated resolution of the dispute may include a provision that provides for something other than an even split of the mediation fees, costs and expenses.

13. **Severability.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

14. **Governing Law.** This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of New Jersey without reference to conflict of law principles, except in such instances when the laws of the United States preempt the laws of the State of New Jersey and all actions, suits and litigation arising under the terms of this Agreement shall be litigated in the Superior Court of New Jersey, Monmouth County, or in the United States District Court for the District of New Jersey (Camden), but no such litigation shall be initiated by a Party until there has been compliance with the mediation provisions of this Agreement that are set forth above. In the event of litigation arising out of this Agreement, the prevailing party shall not be entitled to recover its costs of suit and attorney's fees from the non-prevailing party unless such recovery is specifically and expressly provided for by a statute of the United States or a statute of the State of New Jersey.

15. **Entire Agreement.** This Agreement contains the entire understanding between the parties, and such understanding may not be modified or terminated except in writing and signed by all parties to this Agreement.

16. **Notice.** Any notice required or permitted under this Agreement or under state or federal law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested or by a nationally-recognized overnight delivery service. the Borough of Fair Haven and Licensee may change the address required for service of any notice by providing the other party to this Agreement with a new address for sending and receiving of required notices under this Agreement. No notice required under this Agreement may be served validly by email. All notices to MUNICIPALITY or Licensee shall be delivered to the following addresses:

MUNICIPALITY: Borough of Fair Haven  
Attn: Borough Clerk's Office

MUNICIPALITY 748 River Road  
Fair Haven, New Jersey 07704

Licensee: INSERT NAME AND ADDRESS  
With a copy to: INSERT NAME AND ADDRESS

17. **Emergency Contact Information for Licensee.** The emergency telephone contact number to reach the Licensee 24 hours per day, seven days per week, is: **INSERT PHONE NUMBER**. Should that number be disabled or revised for any reason, Licensee shall give Fair Haven immediate notice of an alternate emergency contact telephone number. Additionally, Licensee may be reached during business hours as follows:

#### **INSERT ADDITIONAL CONTACT INFORMATION**

18. **Assignment.** Licensee may sell, assign or transfer this Agreement without the need for any approval or consent of Fair Haven to Licensee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the Borough of Fair Haven is located by reason of a merger, acquisition or other business reorganization. Except as provided in the previous sentence, Licensee may not assign this Agreement without the prior express written consent of the Borough of Fair Haven, which consent shall not be unreasonably withheld, conditioned, or delayed after written notice to Fair Haven of the request. The terms and conditions herein contained shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

19. **Miscellaneous.**

a. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and all those who succeed to their rights and responsibilities, including their respective successors in interest.

b. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement and shall not be deemed to explain, modify, amplify or otherwise alter the substance of this Agreement.

c. Fair Haven and Licensee each acknowledge that they have had adequate opportunity to review the contents of this Agreement with legal counsel and have executed this Agreement with full and complete understanding of its terms.

d. This Agreement (and all exhibits thereto) is deemed to have been jointly prepared by the Parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any Party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements.

20. **Execution.** Each Party represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations under this Agreement. This Agreement may be executed in one or more counterparts, each of which should be deemed an original, but which together shall constitute one and the same instrument.

[Signature Page to Follow]

**IN WITNESS WHEREOF**, and in order to bind themselves to the terms and conditions of this Agreement, the Parties have caused this Agreement to be executed by their proper corporate officers and their corporate seals have been affixed hereto on the date first set forth above.

ATTEST:

BOROUGH OF FAIR HAVEN

\_\_\_\_\_  
Allyson M. Cinquegrana, RMC/CMR  
Borough Clerk

\_\_\_\_\_  
Benjamin J. Lucarelli, Mayor

ATTEST:

INSERT LICENSEE NAME

\_\_\_\_\_  
, Witness

**COUNCIL OF THE BOROUGH OF FAIR HAVEN  
MONMOUTH COUNTY, NEW JERSEY  
RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-184**

**TITLE: EXECUTIVE SESSION**

**WHEREAS**, the Open Public Meetings, P. L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

**WHEREAS**, this public body is of the opinion that such circumstances presently exist; and

**WHEREAS**, the Governing Body may wish to discuss the following matters:

**Personnel**

1. Planning/Zoning and Code Compliance Officer

**WHEREAS**, minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

**NOW, THEREFORE, BE IT RESOLVED** that the public be excluded from this meeting.

COUNCIL OF THE BOROUGH OF FAIR HAVEN  
MONMOUTH COUNTY, NEW JERSEY  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-185**

**TITLE:        EXTENDING GRACE PERIOD FOR PAYMENT OF 3<sup>RD</sup> QUARTER 2021 TAXES**

**WHEREAS**, the Tax Collector has informed the Mayor and Council that the Monmouth County Board of Taxation was delayed in forwarding necessary information for the preparation and mailing of final tax bills to the real estate taxpayers of the Borough of Fair Haven for the year 2021; and

**WHEREAS**, the present statute requires the imposition of a late charge if 3<sup>rd</sup> quarter 2021 taxes are not paid by the 10<sup>th</sup> of August; and

**WHEREAS**, it would be unfair and unreasonable to impose a penalty for a delinquent payment when the amount of the payment is unknown.

**NOW, THEREFORE, BE IT RESOLVED**, that the Tax Collector of the Borough of Fair Haven is hereby ordered and directed, according to Public Law 1994, Chapter 72, signed July 14, 1994, that if tax bills are not delivered or mailed at least 25 (twenty-five) calendar days prior to the standard due date, then the delinquency date for 3<sup>rd</sup> quarter 2021 taxes shall be established as the twenty-fifth (25) calendar day after the date the tax bill was delivered or mailed. The tax bills will contain the date on which interest shall start accruing.

**THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Fair Haven are hereby extending the grace period for payment of 3<sup>rd</sup> quarter 2021 taxes to August 23, 2021.

COUNCIL OF THE BOROUGH OF FAIR HAVEN  
MONMOUTH COUNTY, NEW JERSEY  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-186**

**TITLE: RESOLUTION PROVIDING FOR THE INSERTION OF A SPECIAL ITEM OF REVENUE IN THE BUDGET OF THE BOROUGH OF FAIR HAVEN PURSUANT TO N.J.S.A. 40A:4-87 (CHAPTER 159, P.L. 1948)  
DRUNK DRIVING ENFORCEMENT FUND– OTHER EXPENSES**

**WHEREAS**, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any such items of revenue in the budget of the County or Municipality when such item shall have been made available by law and the amount was not determined at the time of the adoption of the budget; and

**WHEREAS**, said Director may also approve the insertion of any item of appropriation for equal amount.

**WHEREAS**, the Borough of Fair Haven has received a \$7,666.48 grant from State of New Jersey for the Drunk Driving Enforcement Fund and wishes to amend its 2021 budget to include this amount as revenue.

**NOW, THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Fair Haven, that it hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the budget for the year 2021 in the amount of \$7,666.48 which item is now available as revenue from The State of New Jersey - Drunk Driving Enforcement Fund; and

**BE IT FURTHER RESOLVED** that a like sum of \$7,666.48 be and the same is hereby appropriated under the caption of General Appropriations – Operations Excluded from CAPS:

The State of New Jersey  
Drunk Driving Enforcement Fund

**BE IT FURTHER RESOLVED** that a copy of this resolution be forward to the Director of Local Government Services.

COUNCIL OF THE BOROUGH OF FAIR HAVEN  
MONMOUTH COUNTY, NEW JERSEY  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-187**

**TITLE:        AUTHORIZE THE EXTENSION OF THE INTERLOCAL SERVICE  
                 AGREEMENT BETWEEN THE BOROUGH OF FAIR HAVEN AND THE  
                 BOROUGH OF RUMSON FOR MUNICIPAL COURT SERVICES**

**WHEREAS**, the Interlocal Services Act, N.J.S.A. 40:8A-1 authorizes joint activities among municipalities, and was enacted with the intent to facilitate and promote Interlocal Services Agreements; and

**WHEREAS**, the Boroughs of Fair Haven and Rumson have agreed that the Interlocal Services Agreement for Municipal Court services will include Court Administrator duties as per agreement signed on April 1, 2015; and

**WHEREAS**, it is agreed by the Borough of Fair Haven and the Borough of Rumson that the Agreement may be extended for two (2) additional terms of three (3) years up to a total of nine (9) years; and

**WHEREAS**, it is in the best interest of the Borough of Fair Haven and the Borough of Rumson to extend the agreement and the services listed above beginning on or about April 1, 2021 and to continue through March 31, 2024; and

**WHEREAS**, a copy of the Interlocal Services Agreement is on file in the office of the Borough Clerk.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Fair Haven that the Mayor and Borough Clerk/Administrator of the Borough of Fair Haven are hereby authorized to extend said Agreement an additional and final three (3) year term with an expiration of March 31, 2024.

**BE IT FURTHER RESOLVED** that a copy of this resolution be attached to the original Agreement and a copy be forwarded to the Borough of Rumson and the Monmouth County Administrative Office of the Courts.



**COUNCIL OF THE BOROUGH OF FAIR HAVEN**  
**MONMOUTH COUNTY, NEW JERSEY**  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-188**

**TITLE:        RESOLUTION APPOINTING A MEMBER TO THE FAIR HAVEN  
                 FIRE DEPARTMENT, Regular Member – Kirstin E. Felsmann**

**WHEREAS**, Resolution No. 2020-125 approved Kirstin Felsmann, 664 River Road, Fair Haven, NJ, as an Affiliate Member of the Fair Haven Volunteer Fire Company; and

**WHEREAS**, Ms. Felsmann recently submitted an application to become a regular member and was accepted.

**BE IT RESOLVED** by the Borough Council of the Borough of Fair Haven that Kirstin Felsmann, is hereby accepted as a regular member of the Fair Haven Volunteer Fire Company, and appointed to the Fair Haven Fire Department.

COUNCIL OF THE BOROUGH OF FAIR HAVEN  
MONMOUTH COUNTY, NEW JERSEY  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-189**

**TITLE:        AUTHORIZE AMENDMENT THE STANDARD TERMS OF AN INTERLOCAL SERVICES AGREEMENT, BETWEEN THE BOROUGH OF FAIR HAVEN AND THE BOROUGH OF RUMSON FOR CONSTRUCTION CODE SERVICES IN ORDER TO ADDRESS THE PREVIOUS OMISSION OF FIRE MARSHAL SERVICES**

**WHEREAS**, the Borough of Fair Haven, in the County of Monmouth, State of New Jersey has determined that it would be beneficial for the Borough of Fair Haven to enter into an Interlocal Services Agreement with the Borough of Rumson; and

**WHEREAS**, the Boroughs of Fair Haven and Rumson have had other successful Interlocal Services Agreements for the sharing of the Construction Offices, Department of Public Works and Court for both Boroughs; and

**WHEREAS**, the Boroughs of Fair Haven and Rumson have always considered that the Interlocal Services Agreement for the Construction Office would include Fire Marshal related services, though originally omitted from said Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Fair Haven that this Resolution and a similar Resolution from the Borough of Rumson shall be an amendment to the original Agreement approved on March 12, 2019 and will formally now include the services of Fire Marshal, in order to address the omission of Fire Marshal services from the previous Agreement; and

**BE IT FURTHER RESOLVED** that this amendment to the original contract shall not increase or decrease the cost for the shared services for the Construction Office or for Fire Marshal services; and

**BE IT FURTHER RESOLVED** that when the Agreement between the two municipalities comes up for renewal in 2022, the position of Fire Marshal shall be included in the contract for the next term; and

**BE IT FURTHER RESOLVED** that a certified true copy of this Resolution shall be forwarded to the Rumson Municipal Clerk.

COUNCIL OF THE BOROUGH OF FAIR HAVEN  
MONMOUTH COUNTY, NEW JERSEY  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-190**

**TITLE:        AWARD OF CONTRACT TO VENDOR WITH A NATIONAL COOPERATIVE  
                 CONTRACT FOR STREET MAINTENANCE EQUIPMENT**

**BE IT RESOLVED**, by the Borough Council of the Borough of Fair Haven, County of Monmouth, State of New Jersey as follows:

1. In accordance with the requirements of the Local Public Contract Law P.L. 2011, C.139 (the “Law” or “Chapter 139”) and N.J.S.A.52:34-6.2 the regulations promulgated there under, the following purchase without competitive bids from vendor(s) with a National Cooperative Contract is hereby approved:

**VENDOR**

W. E. TIMMERMAN CO. INC.  
PO BOX 71  
WHITEHOUSE, NJ 08888

NATIONAL CONTRACT # 122017-FSC-1

AMOUNT: \$325,000.00

**DESCRIPTION**

1 – ELGIN WHIRLWIND SERIES MV VACUUM STREET SWEEPER MOUNTED  
ON A PETERBILT 200 CHASSIS FOR THE PUBLIC WORKS DEPARTMENT

In accordance with N.J.A.C. 17:44-2.2 “The vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.”

**WHEREAS**, the Borough Attorney is satisfied that the availability of funds has been provided and a copy of the resolution shall be made a part of the file concerning said purchase; and

**WHEREAS**, the Chief Financial Officer of the Borough of Fair Haven has certified that adequate funds for such contract are available and are designated to the line-item appropriation of the official budget referenced below. A copy of said certification is attached hereto and part hereof and the funds to be expended herein are assigned to the line-item number referenced below. A copy of the within resolution and certification shall be certified by the Borough Clerk:

C-04-55-713-001

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Fair Haven that a certified copy of this resolution shall be provided by the Borough Clerk to each of the following:

- a. Lynn Mattei, Purchasing Agent
- b. Colleen Lapp, Chief Financial Officer
- c. Richard Gardella, Director of Engineering and Public Works
- d. W.E. Timmerman Company, Inc.

### CERTIFICATION OF FUNDS

I, Colleen Lapp, Chief Financial Officer for the Borough of Fair Haven, do hereby certify that adequate funds are available for the contract with W. E. TIMMERMAN CO., INC., P.O. BOX 71, WHITEHOUSE, N.J. 08888 in the amount of \$325,000.00. The funds being expended are for a new Elgin Whirlwind Series MV Street Sweeper mounted on a Peterbilt 200 Chassis for the Fair Haven Public Works Department. The funds that are available for this contract are found in the following line item appropriations or ordinances:

C-04-55-713-001 - \$325,000.00

DocuSigned by:  
  
BC87D295172344E...  
\_\_\_\_\_  
Colleen Lapp  
Chief Financial Officer

**COUNCIL OF THE BOROUGH OF FAIR HAVEN**  
**MONMOUTH COUNTY, NEW JERSEY**  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-191**

**TITLE:     APPROVING A BLOCK PARTY TO BE HELD ON  
              A PORTION OF GENTRY DRIVE AND DENISE COURT**

**WHEREAS**, a request was received to hold a Block Party on Gentry Drive from Third Street to Denise Court on Saturday, September 25, 2021 from 5:00 pm to 9:00 pm (no rain date); and

**WHEREAS**, Chief McGovern reviewed the application and submitted his approval on July 20, 2021;  
and

**NOW THEREFORE BE IT RESOLVED** by the Governing Body of the Borough of Fair Haven that approval is hereby granted for a block party to be held on Gentry Drive from Third Street to Denise Court on Saturday, September 25, 2021 from 5:00 pm to 9:00 pm (no rain date).

**BE IT FURTHER RESOLVED** that Permit No. BP 2021-06 will be issued for said event.

**COUNCIL OF THE BOROUGH OF FAIR HAVEN**  
**MONMOUTH COUNTY, NEW JERSEY**  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-192**

**TITLE:       APPROVE TEMPORARY SIGN INSTALLATION ON THE FAIR HAVEN  
VOLUNTEER FIRE COMPANY PROPERTY**

**WHEREAS**, in accordance with Borough Code, **30-7.24 (f) Special Event Signs**, civic groups or service organizations may erect a temporary sign prior to a special event provided that permission is granted by the Mayor and Council; and

**WHEREAS**, the Fair Haven Fire Company has submitted paperwork to the Borough requesting permission to install a temporary sign for their Annual Firemen's Fair; and

**WHEREAS**, on July 20, 2021, Nicolas Poruchynsky, Zoning Officer approved the Zoning Application for the temporary sign.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Fair Haven that the Fair Haven Fire Company is hereby authorized to erect a temporary sign "The Outback" on an accessory structure that exists on the property from August 16, 2021 until September 6, 2021.

**COUNCIL OF THE BOROUGH OF FAIR HAVEN**  
**MONMOUTH COUNTY, NEW JERSEY**  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-193**

**TITLE:        PAYMENT OF VOUCHERS**

**BE IT RESOLVED** by the Governing Body of the Borough of Fair Haven that the vouchers listed for payment on the July 26, 2021 Bill List are hereby approved and the Finance Department is hereby authorized to release payment to the various vendors.

2020 CURRENT ACCOUNT	\$	5,095.79
2021 CURRENT ACCOUNT	\$	6,766,048.19
GENERAL CAPITAL	\$	15,308.60
OTHER TRUST	\$	12,143.11
<b>TOTAL</b>	<b>\$</b>	<b>6,798,595.69</b>

**COUNCIL OF THE BOROUGH OF FAIR HAVEN**  
**MONMOUTH COUNTY, NEW JERSEY**  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-194**

**TITLE:        AUTHORIZE BOROUGH ADMINISTRATOR TO EXECUTE AND  
BOROUGH CLERK TO ATTEST TO DEED OF OPEN SPACE EASEMENT  
WITH MONMOUTH COUNTY FOR FAIR HAVEN FIELDS (BLOCK 77, LOT 1)**

**WHEREAS**, by Open Space Grant Agreement, dated June 12, 2014, the Borough of Fair Haven (the “Borough”) obtained a \$30,000 grant from the County of Monmouth (the “County”) for the improvement of Fair Haven Fields, also known as and designated Block 77, Lot 1 on the Tax Map of the Borough; and

**WHEREAS**, pursuant to the Open Space Grant Agreement between the Borough and the County, the Borough is required to execute and deliver a Deed of Open Space Easement to the County for recording upon the lands comprising Fair Haven Fields, forever conserving and designating said lands for conservation and recreation purposes; and

**WHEREAS**, the County has provided the Borough with its preferred form of Deed of Open Space Easement, which has been reviewed and revised by the Borough Attorney for the aforesaid purposes;

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Council of the Borough of Fair Haven, County of Monmouth, State of New Jersey, hereby:

- (1) Approve the Deed of Open Space Easement attached hereto as Exhibit A; and
- (2) Authorize the Borough Administrator to execute and the Borough Clerk to attest to the Deed of Open Space Easement attached hereto as Exhibit A; and
- (3) Direct that a certified copy of this Resolution, together with the executed and attested Deed of Open Space Easement, be forwarded to the County of Monmouth.



**COUNCIL OF THE BOROUGH OF FAIR HAVEN**  
**MONMOUTH COUNTY, NEW JERSEY**  
**RESOLUTION**

**Motion by:**

**Second by:**

**AFFIRMATIVE:**

**NEGATIVE:**

**ABSTAIN:**

**ABSENT:**

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**RESOLUTION NO. 2021-195**

**TITLE:       APPROVE TWO APPOINTMENTS TO THE FAIR HAVEN SHADE TREE  
COMMISSION – ANDREA REID AND LEAH BEGANIE**

**WHEREAS**, there are two regular member seats that are vacant on the Borough's Shade Tree Commission, that need to be filled; and

**WHEREAS**, the Shade Tree Commission Chairman has requested that the Alternate #1 and Alternate #2 members fill said vacancies as follows:

**Leah Beganie**, Alternate #1 member to a five-year, unexpired term, that will expire on 12/31/2023

**Andrea Reid**, Alternate #2 member to a five-year, unexpired term, that will expire on 12/31/2022

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Fair Haven that the above-mentioned appointments be made.