

## **RESOLUTION #2021-070**

### **RELATING TO SMALL WIRELESS FACILITIES ON PUBLIC RIGHTS-OF-WAY**

#### **Section I. Purpose and scope**

(1) The purpose of this resolution is to establish guidelines relating to the permitting, installation and construction of small wireless facilities and support structures poles in County rights-of-way in order to comply with federal laws, orders, and regulations. To the extent the provisions of this resolution differ from applicable federal laws, orders, and regulations, the latter shall govern, whether finally approved prior to or subsequent to the effective date hereof.

(2) This resolution is intended to:

(a) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places by pedestrians, vehicular traffic, and utilities;

(b) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(c) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way, or installed on public infrastructure;

(d) Protect against environmental damage, including damage to trees;

(e) Facilitate the deployment of small wireless facilities to provide the benefits of wireless services to County residents and businesses;

(f) Protect other important County interests, including the public health, safety, aesthetics and local property values, while establishing an orderly process for siting small wireless facilities in the rights-of-way;

(g) It is not the purpose or intent of this resolution to: prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of small wireless facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the County must approve under state or federal law.

#### **Section II. Definitions**

The following words, terms, and phrases, when used in this resolution, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandon*, including its derivations, means that, following the placement of small wireless facilities or support structures in the County rights-of-way pursuant to a SWF utility permit by a Company, any of the following has occurred: (1) for any reason the SWF or support structure ceases to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of 180 days without the Company otherwise notifying the County and obtaining County approval; (2) the County revokes the SWF utility permit for placement and use of those facilities or the support structure due to nonpayment of applicable fees; (3) the failure of the Company to comply with the requirements of this resolution, the franchise agreement, or the SWF utility permit; or (4) the Company fails to perform any of its responsibilities, obligations and requirements in this resolution, franchise agreement, or the SWF utility permit relating to the installation, construction, maintenance, use or operation of the small wireless facilities or support structures, and that breach remains uncured for the applicable cure period.

*Accessory equipment or equipment* means any equipment, other than an antenna, that is used in conjunction with a SWF. Such equipment must be attached to or in the immediate vicinity of a SWF support structure, and includes cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment.

*Affiliate or affiliated person* means any person, directly or indirectly, controlling, controlled by, or under common control with a Company, as defined herein; provided, however, affiliate shall not include any limited partner or shareholder holding an interest of less than 15 percent of a Company, or any creditor of a Company, solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, a Company.

*Annual franchise fee* means the annual fee for use of the County's rights-of-way.

*Antenna* means communications equipment that transmits or receives electromagnetic radio signals, electromagnetic waves, radio or other wireless signals used in the provision of wireless communication services, which is attached to a SWF support structure and is used to communicate wireless service. The use of the term 'antenna' shall also refer to the antenna concealment enclosure when such concealment enclosure is required by this resolution or applicable design standards. A concealment element otherwise will not count against the volumetric cap for an antenna when determining if a facility qualifies as a "small wireless facility" under this resolution.

*Applicable codes* mean the duly adopted technical codes of the County, including the building, fire, electrical, plumbing, or mechanical codes, are adopted by reference from the codes of a national code organization, including any local amendments made thereto at any time and from time to time, or codes that are otherwise applicable in the County. The term includes the regulations of the FCC and the Occupational Safety and Health Administration, as well as any local standards or regulations governing the use of rights-of-way, including those set out herein.

*Applicable law* means any or all federal or state statutes, county resolutions, rules, regulations, standards, applicable codes, and other laws, now existing or hereafter adopted, as such laws are amended or as they may from time to time be amended or superseded, which apply to a Company's communications services, its facilities, or the matters covered by this resolution. Where reference is made to a specified law, including a specified state statute, the United States Code, or the Code of Federal Regulations, it shall mean and include such laws as amended or as may be from time to time amended or superseded.

*Application* means an application for a franchise agreement or a SWF permit under this resolution.

*Application fee* means a SWF permit application fee assessed pursuant to this resolution for the County's review of an application for a permit for a SWF or support structure.

*Company* means a wireless operator which seeks to enter, or enters, a franchise agreement with the County for use of County rights-of-way for installation of one or more small wireless facilities and/or support structures, and which may seek or obtain one or more SWF permits issued by the County. Sometimes referred to herein as a "grantee" or an "applicant".

*County* means Baldwin County, Alabama.

*County laws* mean any codes, regulations, standards, or specifications adopted by reference; and shall also include the sub-article regulations and any other such rules or regulations that departments, agencies, commissions, boards, or bureaus of the County are authorized to establish; all of which are as amended or as may from time to time be amended or superseded.

*County-owned pole* means (i) a pole owned by the County in the right-of-way that provides street lighting functions, including light poles, (ii) traffic signal poles and stanchions owned by the County, and (iii) a pole or similar structure owned or operated by the County in the right-of-way that supports only wireless facilities. Notwithstanding the foregoing, the term does not include utility facilities owned by public utilities.

*County-owned structure* means any facility, structure or infrastructure located in the rights-of-way to which the County holds title, including County-owned poles, towers, and communications infrastructure.

*County-owned support structure* means a County-owned pole or County-owned structure that is available or approved for collocation or attachment of a SWF.

*County Engineer* is the County representative delegated responsibility for management of the rights-of-way, and to administer and enforce this resolution on behalf of the County, and that person's designee.

*Collocate*, or its derivations, means to place or install a SWF on an existing support structure that is owned, controlled, or leased by a utility, the County, or other person or entity, including a Company; or the modification or replacement of such a structure for the purpose of such placement or installation.

*Day* means a calendar day.

*Distributed antenna system* or *DAS* means a network or facility that distributes radio frequency signals to provide wireless services and consisting of (1) remote antenna nodes deployed throughout a desired coverage area; (2) a high-capacity signal transport medium connected to a central hub site; and, (3) equipment located at the hub site to process or control the radio frequency signals through the antennas, which meets the height and size characteristics of a SWF.

*Emergency* means a condition that (1) constitutes an immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause substantial damage to the right-of-way or to facilities in the right-of-way, or adjacent thereto.

*FCC* means the Federal Communications Commission of the United States or any successor agency.

*Franchise agreement* means a written agreement between the County and a Company, approved by the County Commission, permitting use of County rights-of way. SWF utility permits will be issued only to wireless operators who have entered a franchise agreement with the County.

*Include*, or its derivations, does not limit a term to its specified example.

*Install*, or its derivations, means to install, construct, place, locate, collocate, relocate, replace, or modify a SWF or support structure in the rights-of-way.

*Make-ready work* means work the County reasonably determines to be required to accommodate a wireless provider's installation on a County-owned support structure and to comply with all applicable standards. The work may include repair, rearrangement, replacement and construction of poles; inspections; engineering work and certification; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); site preparation; and electrical power configuration. The term does not include a wireless provider's routine maintenance.

*Person* means an individual, a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization.

*Private property* means real property located in the County that does not lie within the rights-of-way, including such appurtenances or easements attached to or associated with such property, which is not owned by the County, a municipality, the state, or other public body.

*Replacement* means installing a new SWF support structure of comparable or smaller proportions and of comparable or shorter height to a preexisting small cell support structure in order to accommodate collocation of small wireless facilities, and the associated removal of the preexisting small wireless facilities or support structure. To qualify as a replacement, the replacement support structure must be installed within five feet of the existing support structure which it will replace.

*Rights-of-way* means the surface of and the space on, above, and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public boulevard, public parkway, public drive, or public utility easement, immediately adjacent to and parallel with any such street, road, highway, lane, alley, or sidewalk (to the extent of the County's interest or authority), now or hereafter held by the County, whether opened or unopened; but not including any municipal, state, or federal rights-of-way or any property owned or controlled by any person or entity other than the County, except as provided by applicable law or pursuant to an agreement between the County and any such person or entity. Such term shall also not include property such as County parks, County buildings, County property, public works facilities, or public utility facilities owned or leased by the County which is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility distribution facilities.

*Separate property* means real property, whether private property or property publicly owned or controlled, that does not lie in the rights-of-way.



*Small wireless facility or SWF utility permit* means a permit issued by the County Engineer to a Company which relates to one or more specified small wireless facilities or support structures in the County right-of-way.

*Small wireless facility or facilities (SWF)* means antenna and associated accessory equipment, which meet the following requirements: (1) each antenna associated with the deployment, excluding associated accessory equipment, is no more than three cubic feet in volume; (2) all other accessory 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 28 cubic feet in volume; (3) the facilities are mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than ten percent taller than other adjacent structures located within 100 feet and on the same portion of the right-of-way, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than ten percent, whichever is greater; (4) the facilities do not require antenna structure registration under FCC rules; (5) the facilities are not located on tribal lands, as defined under 36 C.F.R. 800.16; and (6) the facilities do not result in human exposure to radio frequency emissions in excess of the standard specified in applicable FCC rules, as these rules may be hereafter amended. The term includes micro wireless facilities, DAS and other wireless technologies that fall within the above specifications and may be referred to as a "node(s)" when referencing the numbers of small wireless facilities per application or elsewhere in this resolution. Where reference is made in this resolution to small wireless facility or facilities, it shall mean the antenna or associated accessory equipment, or both.

*Small wireless facility support structure or support structure* means a freestanding structure designed or used to support, or capable of supporting, small wireless facilities. The term includes utility poles, street light poles, and similar structures, which are located solely in the rights-of-way. The term does not include County-owned poles or County-owned structures that are not available or approved for collocation or attachment of a SWF.

*Stealth technology or stealth* means a method of concealing or minimizing the visual impact of a SWF and support structure by incorporating features or design elements which either totally or partially conceal such small wireless facilities. All wiring associated with the small wireless facilities shall be shrouded or concealed in shrouding on the facility. The use of these design elements is intended to produce the result of having such facilities blend into the surrounding environment or disguise, shield, hide or create the appearance that the small wireless facilities are an architectural component of the support structure.

*Technically feasible* means that by virtue of engineering or spectrum usage the proposed placement for a SWF, or its design, concealment measure, or site location can be implemented without a material reduction in the functionality of the SWF.

*Transmission media* refers to the point within a SWF facility or its support structure at which radio waves are guided along a physical path; examples of guided media include twisted pair cables, coaxial cables, and optical fibers, all of which shall be shrouded or concealed within the facility or support structure.

*Utility pole* means a pole or similar structure located in the right-of-way that is used in whole or in part to provide landline telecommunications services or for electric distribution or a similar utility function. The term does not include such a pole or similar structure 15 feet in height or less unless the County has granted a waiver to permit its use for small wireless facilities.

*Wireless communications services* or *wireless services* mean communications services made available to subscribers through wireless facilities, including any FCC licensed or unlicensed radio communications services, whether used for transmission or reception of voice, video, or data, including, wireless fidelity ("WiFi") and personal wireless services as defined by the Communications Act, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. Such term does not include broadcast radio or television services, private business radio services, or amateur radio services.

*Wireless facilities* mean equipment at fixed locations which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, DAS, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term does not include (1) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (2) wireline backhaul facilities; or (3) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

*Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications service in the state, that builds or installs small wireless facilities or support structures, but that is not a wireless services provider.

*Wireless provider* means a wireless infrastructure provider or a wireless service provider but does not include utility companies that provide gas, electricity, water, or sewer services that install wireless facilities that are used exclusively for internal utility company communications related to the provision of utility services, such as (a) advanced metering infrastructure (also known as "smart metering" systems); (b) monitoring the security of utility sites and network systems; or (c) monitoring network usage, capacity, or performance. However, if a utility company or any of its affiliates use any such facility to provide services within the definition of "wireless communications services," or if a utility company or any of its affiliates engages in activities that would make it a "wireless infrastructure provider," then it shall be considered a "wireless provider" to the extent of its provision of such services or engagement in such activities.

*Wireless service provider* means a person that provides personal wireless communication services to the public or citizens of the County on a commercial basis and is authorized by the FCC to provide those services.

### **Section III. Grant of authority**

(1) Upon application by a wireless provider on forms provided by the County, the County may enter a franchise agreement with a Company granting a non-exclusive franchise to construct, maintain, and operate small wireless facilities and/or support structures in the rights-of-way in accordance with and subject to the provisions of this resolution, applicable law, and any acceptable additional terms as negotiated by the County or permitted by applicable law. The franchise agreement is subject to approval by the County Commission. Approval of installation of facilities at specific locations or on specific support structures will be administered through the SWF utility permit process set forth in this section.

- (2) Each franchise agreement shall contain the following certifications by the Company:
- (a) Company is a \_\_\_\_\_, duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_, is qualified to do business under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, to enter, execute and deliver this franchise agreement, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this franchise agreement.
  - (b) Company, as of the date of this franchise agreement, has adequate financial resources to install small wireless facilities and/or support structures in accordance with the requirements of this resolution, and/or as otherwise required by applicable codes, and knows of no technical or legal impediment which would prevent it from performing as so contemplated.
  - (c) Company is not prohibited by any agreement or applicable law from entering this franchise agreement.
  - (d) All corporate actions and consents required on Company's part to enter, execute and deliver this franchise agreement have been completed.

The foregoing certifications are material to the grant of the franchise agreement. A breach of any of the certifications above shall constitute a non-curable default under the agreement, and shall entitle the County to immediately terminate the franchise agreement for cause. A breach of the certification contained in subsection (d) shall constitute a curable default under the agreement, wherein following written notice, a Company will have reasonable time to cure such default.

(3) *Nonexclusive.* A Company's use of the rights-of-way pursuant to a franchise agreement shall be nonexclusive. The County specifically reserves the right to grant, at any time and from time to time, such additional franchises, licenses, use agreements, permits or other rights to use the rights-of-way for any purpose as determined by the County, and to any other person, including itself, as it deems appropriate, subject to applicable law.

(4) *No title.* The grant of a franchise or utility permit shall not convey title, equitable or legal, in the rights-of-way, and the rights granted by the franchise agreement do not excuse the Company from obtaining appropriate access or attachment agreements before locating its facilities on any support structures or County support structures in the rights-of-way.

(5) *Term.* Subject to termination or revocation in accordance with this resolution, the franchise agreement (a) shall be valid for a period of five years from its effective date and shall be subject to renewal as provided in this subsection; provided, however, that if the Company already has entered into a franchise with the County, the County has the option of proceeding under that franchise. Upon a Company's written certification to the Baldwin County Commission within 30 days of the expiration of the term of the franchise agreement that the Company remains in compliance with the provisions of this resolution, the franchise agreement and each SWF utility permit, the franchise agreement will be automatically renewed for one additional five-year term without further action required by the County.

(6) *Operation after termination; holding over.* Notwithstanding anything to the contrary contained in this resolution, in the event a Company, at the sufferance of the County, holds over beyond the term of its franchise agreement and continues to operate all or any part of its small



wireless facilities, provide all or any of its wireless communications services, or otherwise exercise all or any of the rights granted under the franchise agreement, after the term of the agreement, then the Company shall continue to comply with and be subject to all applicable provisions of this resolution, including all fee and other payment provisions, throughout the period of such holding over, provided that any such holding over shall in no way be construed as a renewal or other extension of the franchise agreement. In the event the term of a franchise agreement has expired and the parties are in the process of re-negotiating, applying for, or processing an application for a renewal of the franchise agreement or a new franchise agreement, or as they may otherwise agree, the agreement shall continue on a month-to-month basis, unless either party gives 30-days' advance written notice to the other that they desire to terminate the agreement.

(7) *Franchise agreements or SWF utility permits for uses of rights-of-way*

(a) The franchise agreement or SWF utility permits entered pursuant to this resolution only relates to, and only grants a Company authority with respect to, the placement of small wireless facilities on or in the immediate vicinity of support structures, including fiber optic cable for up to 10 feet on either side of the support structure, that are located or proposed to be located in the rights-of-way. No provision in this resolution is intended to permit, regulate or authorize the placement by a Company of wire or fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport communication signals, data or messages between support structures or between any other points in the rights-of-way. In the event a Company desires to place communications equipment or other facilities along the rights-of-way of a kind not authorized by the franchise agreement, it shall obtain a separate franchise agreement or similar authorization from the County relating to the construction of other types of facilities or use of other locations on or along the rights-of-way.

(b) If a Company desires to use any of its small wireless facilities for the purpose of providing any services other than the provision of telecommunications or information service, such as cable service, other subscription multichannel video programming services, utility, or other non-utility services to existing or potential subscribers or resellers, or by providing any other use of small wireless facilities to existing or potential consumers, the Company shall seek such additional and separate franchise, use agreement, or authorization from the County or other authority as may be required by applicable law.

(c) *Only small wireless facilities allowed.* No wireless facilities, other than small wireless facilities or small wireless facility support structures, shall be allowed or permitted in the rights-of-way pursuant to a franchise agreement as defined herein.

(8) *Records and reports.* Each Company shall cooperate with the County with respect to the administration of this resolution and to this end, shall furnish or make available to the County upon request, at no cost to the County, such records, reports, and other information reasonably necessary, as determined by the County, for the administration and enforcement of this resolution and in such form and manner as prescribed by the County.

(9) *Revocation.* The County may terminate a franchise agreement or revoke a SWF utility permit in accordance with this resolution.

**Section IV. Notice of transfer, sale or assignment**



(1) *Notice of transfer.* A Company shall not sell, transfer, lease, assign, set, or dispose of, in whole or in part, its small wireless facilities or support structures in the rights-of-way without providing the Baldwin County Commission prior written notice:

- (a) Identifying the entity (hereinafter referred to as "successor in interest") that will acquire control of the Company or the facilities;
- (b) A summary of the proposed transaction; and
- (c) A statement from a person with authority to bind the successor in interest certifying under penalty of perjury that the successor in interest agrees to and accepts, and is able to meet the terms and conditions of, this resolution, the franchise agreement, and each SWF utility permit.

(2) *Notice of consummation.* Within 45 days after the closing of the transaction, or such additional time as the Baldwin County Commission may allow, the successor in interest shall submit to the Baldwin County Commission a written certification, executed by an authorized representative of the successor in interest, certifying under penalty of perjury that

- (a) The successor in interest accepts and agrees to be bound by, and to assume all liabilities and obligations of the Company under this resolution;
- (b) All required licenses, consents, certificates of public convenience and necessity, or other governmental authorizations issued by the FCC, the Alabama Public Service Commission or any other agency having jurisdiction over the successor in interest's acquisition of an interest in the Company or its facilities have been obtained;
- (c) Proof of insurance and the posting of any required security in accordance with this resolution; and
- (d) The names and addresses of those persons to whom notice as may be required hereunder should be directed.

(3) *Outstanding compensation due.* In the event the Company has outstanding compensation, payments or other liabilities due to the County that have not been paid or satisfied prior to close of the transaction, both the Company and the successor in interest shall be jointly and severally liable to the County for same. The post-transaction notice requirements of this subsection shall also apply to transfers or mergers with an affiliated person.

## **Section V. Application for SWF, supporting structure permits**

(1) *Pre-application review.* Prior to the submission of an application for a utility permit for a SWF or supporting structure, a Company is encouraged to have a voluntary pre-application meeting with the County Engineer to review preliminary documents and graphic exhibits of the proposed facilities or support structures and discuss the application, location, and design requirements for the proposed facilities, and the provisions of the franchise agreement. The primary purposes of the review are to streamline application processing and reduce site plan and design revisions, as well as the multiple reviews associated therewith. If a Company utilizes the pre-application review process, the applicable timelines for review will not begin until an application is formally submitted following the pre-application meeting.

(2) A permit application must be submitted for each small wireless facility or new support structure on a form, paper or electronic, provided by the County. If a Company has a good faith belief that any information submitted is proprietary or confidential, the Company must so mark each page prior to submittal. An application packet will be maintained by the County Engineer.

(3) Subject to County regulations concerning right-of-way construction, a SWF utility permit is not be required for small wireless facilities and support structures for which a permit was previously awarded, in the following instances:

(a) For routine maintenance or repairs.

(b) For replacements or modifications that do not appreciably change position, characteristic, size, or appearance of the existing facility, unless such change would violate a provision of this resolution, the franchise agreement, or the SWF utility permit.

(4) When a SWF or support structure has been installed without a SWF utility permit due to an emergency, a permit application must be submitted within ten days if a permit would originally have been required to perform the work undertaken in connection with the emergency. Absent the submittal of an application, the SWF or support structure must be removed.

(5) *Inspection and Notice of Completion.* In addition to any inspections that may be required in connection with building, electrical, or other permitting, the County reserves the right to inspect all SWF or support structure work to ensure compliance with this resolution, the franchise agreement, and applicable permits. Upon completion of a facility or support structure installation, the Company shall provide written notice and certification of compliance, that the facilities or support structure were constructed in accordance with the approved specifications.

## **Section VI. Fees – Applications for SWF permits and Annual Franchise Fees**

(1) *Annual franchise fee.* As compensation for access to the right-of-way pursuant to a franchise agreement, the County may elect to charge an annual franchise fee set by the County Commission as amended from time to time, but not to exceed \$100 per year per SWF and \$170.00 per year per SWF collocated, mounted, or installed on or adjacent to poles owned or controlled by the County. Notwithstanding the foregoing, the County may increase the amount of the foregoing annual franchise fee as long as the increased fee is either:

(a) A reasonable approximation of the County's costs associated with or allocable to a Company's use and occupancy of the rights-of-way, and

(b) No greater than the fees charged to similarly situated competitors for their installation of similar communications facilities in the rights-of-way; or

(c) Otherwise consistent with applicable law.

(2) *Franchise fee computation and payment; report.*

(a) The franchise fee shall be due the January 1<sup>st</sup> following issuance of an SWF utility permit and last payable without penalty on January 31<sup>st</sup>.

(b) The franchise fee shall be due and paid for each succeeding year thereafter no later than January 31<sup>st</sup>.



(c) Each annual franchise fee payment shall be accompanied by a report, certified as true and accurate by an officer of the Company, setting forth the basis for the computation of that year's fee and listing the location of each of the Company's small wireless facilities and support structures during the preceding calendar year.

(3) *Inspection and audit; verification.*

(a) Subject to the provisions of subsection (b) below, the County shall have the right to inspect and audit, at the Company's offices where such records are maintained, all records relevant to calculating the franchise fee.

(b) Should the Company's records be located in another city or state, the Company shall, upon the written request of the County, make such records available to the County at a mutually agreed upon time and location within the County. Each party shall pay its own costs and expenses incurred in connection with any such audit, except in the event there is an underpayment of five percent (5%) or more of the amount which was due and payable to the County, in which case, in addition to making full payment of the relevant obligation, the Company will promptly pay the actual costs and expenses incurred by the County, including attorneys' fees and the professional fees of the auditor performing the audit; provided, however, the Company's obligation to pay such costs and expenses shall be capped at \$15,000.00 for any one audit. The County may not retain any person or entity to perform the audit whose compensation is dependent in any manner upon the outcome of the audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

(c) Any additional amount due to the County as a result of the audit, including interest, shall be paid by the Company within 30 days after receipt of written notice from the County accompanied by a copy of the audit report and any other supporting documents utilized to determine the amount due.

(4) *Final payment.* In the event a Company quits its operations within the County, it shall provide the County a report for the calendar year through the date of cessation of operations, which report shall itemize each SWF and supporting structure maintained by the Company during such year, and the date of its removal; and shall make a final payment of any amounts owed to the County within 90 days thereafter; provided, this subsection shall be inapplicable to a transfer, sale or assignment pursuant to Section 4.

(5) *Evasion of franchise fee prohibited.* Any action or transaction having the effect of circumventing or evading the payment of a franchise fee, whether by the non-reporting of small wireless facilities or support structures or any other means which evades the payment of franchise fees, is prohibited. For a violation of this subsection, the County may, in addition to all other remedies, require the Company to remove any non-reported facility or support structure at its sole risk and expense, and pay a penalty of three times the annual franchise fee which was evaded, without proration. The removal of the non-reported facility or support structure shall be subject to the removal, repair and restoration requirements contained in this resolution.

(6) *Affiliate-owned facilities.* Small wireless facilities or support structures owned by an affiliate of a Company shall be included in the calculation of the franchise fee, unless a fee is paid to the County by such affiliate in accordance with this section.

(7) *No waiver of County rights.* Acceptance of any payment by the County shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release or waiver of any claim the County may have for further or additional sums payable under the provisions of this resolution. All amounts paid shall be subject to audit and re-computation by the County as provided herein.

(8) *Application of interest.* In the event any payment is not made when due date, interest shall accrue from such date at the then-current statutory rate for pre-judgment interest.

(9) *County office for payment.* Unless the County permits electronic payments or provides another payment method, all remittances for the monies due hereunder shall be mailed or delivered to the address provided by the Baldwin County Clerk. Such remittances shall clearly identify or reference the Company, its franchise agreement, and SWF facilities or support structures.

(10) *Removal fee may be applicable.* A fee for removal of small wireless facilities or support structures is hereby authorized as necessary, unless the removal does not hinder vehicular or pedestrian traffic or an ongoing County project or improvement, and the County incurs no additional cost to ensure safe removal.

(11) *Additional cost for make-ready work.* Prior to installation of any small wireless facilities to County-owned support structures, a Company shall reimburse the County for make-ready work or construction necessary for attachment of such facilities.

(12) *Escalation of fees.* Notwithstanding anything to the contrary contained in this section, the fees required under subsection (1) of this section may be adjusted to recover a reasonable approximation of the County's actual and reasonable costs in administering and overseeing the small wireless facilities and support structures installed pursuant to this resolution.

## **Section VII. Permit application requirements**

(1) *Franchise agreement required.* SWF utility permit applications will be accepted only from a Company which has entered into a franchise agreement with the County, approved by the County Commission, and complied with the terms thereof.

(2) *Application requirements.* A SWF utility permit application shall contain the following:

- (a) The Company's name, address, telephone number, and e-mail address;
- (b) The names, addresses, telephone numbers, and e-mail addresses of all representatives authorized to act on behalf of the Company with respect to the filing of the application;
- (c) The most adjacent address and latitude/longitude or geographic coordinates (GPS), accurate to six (6) decimal places, for each proposed SWF or structure;
- (d) A technical description of the proposed SWF including detailed diagrams with dimensions, volumes, materials, finishing, color, etc. and photo-simulations accurately depicting the antenna facility and associated pole(s), if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be



performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;

(e) Site, structural, and elevation plans for the pole and associated foundation drawn to scale, prepared and stamped by a professional engineer licensed in the State of Alabama, identifying the proposed SWF, including the number, size, type of the antenna facilities and associated pole(s), conduit, cables, electrical power source, meter and disconnect, proximity to other small wireless facilities in the area, surface and underground infrastructure existing and proposed. Include pole and foundation height, depth, diameter, and reinforcement;

(f) Certification by a licensed engineer that the SWF and any support structure will comply with all applicable codes and FCC rules and regulations;

(g) Certification that the Company is a franchised wireless provider as defined herein, authorized to construct, maintain and operate small wireless facilities or support structures;

(h) A declaration signed by an authorized representative of the Company to the effect that the information in the application is true and accurate and that the SWF and associated support structure, if any, will be constructed in conformance with the specifications contained therein;

(i) In the case of a new pole, a statement relating to the new pole's ability to collocate additional small wireless facilities;

(j) In the case of a new pole, documentation demonstrating collocation does not provide a feasible alternative for the provision of wireless services in the area;

(k) In the case of a proposed attachment to a County-owned facility or pole, an executed attachment agreement with the County;

(l) In the case of a proposed attachment to a pole owned by another entity, an executed attachment agreement with that entity; and

(m) In the case of ground mounted equipment, a concealment element plan.

(3) *Amendment.* Any amendment to information contained in an application shall be submitted in writing within 10 days after the change necessitating the amendment. An amendment that materially changes the scope or nature of the application shall restart the timelines contained in this resolution.

## **Section VIII. Effect of SWF utility permit**

(1) *Authority granted; no property right or other interest created.* A SWF utility permit authorizes a Company to undertake only the activities noted therein. The permit does not create a property right or grant authority to impinge upon the rights of others having an interest or right-of-use in the rights-of-way.

(2) *Duration.* No permit to conduct construction, installation or other activities in the right-of-way shall be valid for more one (1) year; provided, the County Engineer may grant one extension of time, for a period not exceeding one (1) year, upon Company's written request demonstrating reasonable cause for the need. Thereafter, a Company shall be required to make application for a new SWF utility permit.

(3) *No warranties.* The County makes no warranties or representations regarding the fitness, suitability, or availability of the County's right-of-way or County-owned support structures. A Company's use of the County's right-of-way or County-owned support structures for installation and operation of small wireless facilities or for provision of wireless service is at its sole risk.

(4) *Revocation of SWF permits.* Revocation of SWF permits shall be governed by this resolution.

## **Section IX. Action on SWF permit applications**

(1) The County Engineer shall review an application for a SWF permit considering its conformity with applicable provisions hereof and shall issue a SWF permit on nondiscriminatory terms and conditions subject to compliance with requirements hereof.

(2) An application for a SWF permit may be denied if the proposed SWF; a proposed new, modified, or replacement pole; or a proposed collocation:

- (a) Interferes with the safe operation of traffic control equipment;
- (b) Interferes with sight lines or clear zones for transportation, vehicular traffic, or pedestrians;
- (c) Interferes with or fails to comply with the Baldwin County Highway Department Utility Manual, as amended from time to time;
- (d) Fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- (e) Fails to comply with American Association of State Highway Transportation Offices (AASHTO) or other applicable codes;
- (f) Fails to comply with the provisions of this resolution, the franchise agreement, or applicable law;
- (g) Is proposed to be located more than five feet from the right-of-way line, unless otherwise approved by the County Engineer;
- (h) In the case of small wireless facilities, is proposed
  - (i) To be mounted on any arms or any horizontal structure used to support or mount traffic control signals or other traffic control devices;
  - (ii) To be placed less than ten feet away from energized electrical distribution lines, unless otherwise approved by the electric utility;
  - (iii) To be hung from energized electrical lines; or

- (iv) To be mounted on abandoned poles or poles to be removed in conjunction with the undergrounding of electrical utilities in a particular area.

## **Section X. Application review; decisions; timeframes**

(1) *Franchise agreement required.* Applications for SWF utility permits will not be accepted prior to a Company having entered a franchise agreement with the County, and approval thereof by the County Commission.

(2) *Review for completeness.* Within ten days after receipt of an application, the County Engineer will determine and notify the Company (all notifications from the County Engineer to the Company under this section shall be sent via electronic mail, directed to the address provided in the application) whether the application is complete. An application shall not be deemed complete until the Company has submitted all documents, information, forms and fees set out herein, pertaining to the location, construction, and configuration of the proposed small wireless facilities or support structures at the requested location(s).

(a) *First notice of incomplete application.* If an application is deemed incomplete, the County Engineer will notify the Company and specifically identify (a) the missing documents or information, and (b) the specific rule, regulation or code provision creating the underlying obligation to provide same. If the Company makes a supplemental submission to address or provide the missing information or documents identified by the County within 60 days, the County shall have ten days thereafter to verify that the application is complete. If no supplemental submission is made, the application shall be deemed denied.

(b) *Second notice of incomplete application.* If the supplemental submission is incomplete, the County Engineer will again notify the Company, and specifically identify the missing documents or information required to be submitted pursuant to the County's original notice. If a Company fails to submit sufficient documents or information to render the application complete within 60 days of the second notice, the application shall be deemed denied.

(c) *Content of supplemental submissions.* The additional documents or information provided in supplemental submissions shall be limited to the deficiencies cited in the notice(s) from the County. No material changes shall be made to the original application other than those necessary to cure any identified deficiencies.

(d) *Material changes.* If a supplemental submission includes material changes to the facilities identified in the original application, proposes or requests a small wireless facility not identified in the original application, or otherwise includes or makes a material change to the original application other than as necessary to cure the deficiencies identified by the County, such supplemental submission shall be deemed a new application.

(3) *Timeline for action on applications.* Unless otherwise agreed by the Company and the County Engineer, the County Engineer will approve or deny applications for SWF permits within the time period set forth below, plus any tolling period as set out in subsection 4:

- (a) For applications to collocate a small wireless facility on an existing structure, within 60 days of receipt of a complete application;



- (b) For applications to deploy a small wireless facility on a new structure, within 90 days of receipt of a complete application;
  - (c) For multiple applications or a single, consolidated application for a small wireless facility network project which seeks approval of a mix of collocated small wireless facilities and new structures (i.e., one or more of the applications is for a new structure), within 90 days of receipt of a complete application.
- (4) *Tolling period.* Unless otherwise agreed by the Company and the County Engineer, the time periods applicable to action on an application shall be tolled as follows:
- (a) When notice has been given by the County Engineer pursuant to subsection 2(a) above, the time period for action on the application shall reset and not begin until the Company timely submits all documents and information identified by the County in the first notice (i.e., the date of submission is day zero);
  - (b) When notice has been given by the County Engineer pursuant to subsection 2(b) above, the time period for action on the application shall reset and not begin until the Company timely submits all documents and information identified by the County in the second notice (i.e., the date of submission is day zero).
- (5) *Final decision.* The County Engineer will notify the Company in writing of his final decision and, if the application is denied, provide the basis for such denial.
- (6) *Effect of timelines.* The failure of the County to act on an application within the processing timelines set forth herein shall not constitute, or be construed to constitute, a grant or approval of an application. Upon expiration of such time periods, the Company may pursue such remedies as are available under applicable law.
- (7) *Batched applications.* Applications for multiple facilities or locations may be submitted as follows:
- (a) No single batched submittal shall contain more than ten (10) applications;
  - (b) There must be a minimum of ten (10) days between submittals of batched applications by the same Company;
  - (c) No more than three (3) batched applications may be submitted in by the same Company in any thirty consecutive day period;
  - (d) The County reserves the right to negotiate the submittal of batched applications by a single Company on large scale installations and the Company and the County shall set out their agreement as to the process, timeline, and costs for initial project review in writing.
- (8) *Burden of Proof.* The Company shall at all times bear the burden of establishing compliance with the requirements of applicable codes, this resolution, and the licensing agreement.



(9) *Appeal:* Upon denial of an application by the County Engineer, the Company may, at its option, seek review in a court of competent jurisdiction or file a written appeal to the County Commission within 15 days. An appeal will be considered by the Commission at a regular meeting, within 30 days. The Company will be notified of the date of such meeting. The Company may seek review of an adverse decision by the Commission in a court of competent jurisdiction.

## **Section XI. Small Wireless Facilities in the Rights-of-Way; Collocation, Design, Concealment, and Aesthetic Requirements**

(1) Small wireless facilities and any new, modified, or replaced pole for the collocation of small wireless facilities in the rights-of-way shall meet the following collocation requirements:

(a) *Collocation first.* Facilities may be installed on new poles only if the Company demonstrates that (i) no reasonable collocation opportunities exist in the area where the facility is proposed to be placed; or (ii) attachment to a new structure will achieve a more visually appealing design, demonstrably more effective service coverage, or some other public benefit not achieved by collocation. The Company must support its claim through written evidence such as affidavits, correspondence, engineering reports or other information demonstrating that the Company has taken reasonable action to achieve collocation in the requested location but has received no response or has been denied reasonable access to all potential collocation sites in the subject area, and otherwise show that the Company is unable to collocate on an existing support structure. Only entities granted a certificate of convenience and necessity by the public service commission pursuant to Code of Ala., § 37-4-28 or licensed by the Federal Communications Commission may erect new poles in the County's rights-of-way.

(b) *New poles; collocation compatible design.* New poles approved for the primary purpose of installation of small wireless facilities shall be designed to accommodate the collocation of multiple wireless providers' antennas and related equipment to the maximum extent feasible, but no less than one (1) similarly sized SWF.

(c) *Secondary use.* Where small wireless facilities are collocated on existing poles, use of the pole for such facilities shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a facility becomes unnecessary, obsolete, and/or no longer in use, the pole shall not be retained for the sole purpose of accommodating the SWF and it shall be removed promptly, together with all associated equipment, and the pole shall be removed unless a SWF permit is obtained approving a new pole for the primary purpose of installing small wireless facilities.

(d) *Collocation on County street light poles or County traffic signal poles; additional requirements.*

(i) Small wireless facilities are not permitted on traffic signal poles unless the Company can demonstrate that denial of the SWF permit will effectively prohibit the provision of telecommunications service or personal wireless service in violation of any applicable law.

(ii) Before collocating on existing street light poles, the Company must show structural evidence that the current pole and foundation design can meet current AASHTO design standards for wind loads with the addition of the small cell equipment.

- (iii) If poles cannot meet AASHTO requirements for wind loads with the addition of the small cell equipment, the Company has the option of replacing the current pole with a new pole capable of supporting the existing and proposed additions. Luminaires on new poles must maintain the same height as that replaced and/or adjacent luminaires and be of the same design as the existing luminaires.
- (iv) The antenna shall be attached to the top of pole only. No mountings are allowed on the luminaire mast arms.
- (v) Accessory equipment shall not be mounted on the pole. Accessory equipment shall be located either within or as an extension of the pole, within an underground vault, or within an enclosure/cabinet adjacent to the pole camouflaged to appear as a public amenity as shown on the concealment element plan.
- (vi) The pole design must be capable of accommodating a street light arm even if one is not installed initially.
- (vii) The application must provide analysis that the proposed small wireless facility will not cause any interference with the County traffic signal systems, emergency signal control devices, other smart County applications, other signal communication components, or any other unforeseen interferences.
- (viii) Small wireless facilities shall have their own power supply with disconnect and County workers and contractors shall have the ability to easily shut off radio signals and power while working on County street lights, signal system elements, poles or other facilities, when necessary.
- (ix) Any fiber or power cables supporting the small wireless facility shall be labeled and housed in conduit(s) separating them from County fiber or power cables.

(2) *Pole construction, placement, height, and diameter requirements.* Small wireless facilities and new, modified, or replacement poles for the collocation of such facilities shall meet the following requirements:

- (a) Pole spacing. New poles shall be no less than 300 feet from any other pole on the same side of the roadway containing small wireless facilities.
- (b) New poles. Any new pole shall be a metal pole.
- (c) Pole setback. Poles shall be placed as far back from the roadway as technically feasible without any encroachment of the pole and antenna facilities onto private property unless alignment with other street poles, trees, features is more aesthetically desirable as determined by the County.
- (d) Pole placement. New poles, replacement poles and/or antenna facilities shall be placed where they:
  - (i) Do not obstruct the line of sight for transportation, vehicular, or pedestrian traffic;
  - (ii) Do not obstruct the clear zone or have a breakaway design;
  - (iii) Comply with the Americans with Disabilities Act (ADA), similar federal or state standards, county construction and sidewalk clearance standards and applicable laws, in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic uniform warrants, not interfere with utility or

safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public health, safety, or welfare; and

(iv) Replacement poles shall be placed as close to the original pole as possible, and no more than five feet from the existing pole location.

(e) Pole heights. The height of poles above the ground including the antennas shall be:

(i) Fifty (50) feet or less in non-residential areas;

(ii) Forty (40) feet or less in residential areas with above ground power; and

(iii) Thirty-five (35) feet or less in residential areas with underground power.

(f) Metal pole construction requirements.

(i) Structural/Foundation Design. The pole and pole foundation shall be designed in accordance with the most current version of American Association of State Highway Transportation Officials (AASHTO) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals.

(ii) Pole Coloring. The pole shall be black in color unless another color scheme is determined to be more aesthetically desirable by the County.

(g) Existing wooden pole construction requirements for collocation:

(i) The Company must show structural evidence that the existing wooden pole and foundation design can meet the current wind load requirements based on NESC extreme wind category with the addition of the small wireless facilities.

(h) Decorative poles; additional requirements

(i) Decorative poles shall be metal poles only;

(ii) Antennae shall be mounted on top of the pole only;

(iii) Accessory equipment shall be located either within or as an extension of the pole, within an underground vault, or within an enclosure/cabinet adjacent to the pole camouflaged to appear as a public amenity as shown on the concealment element plan; and

(iv) Aesthetics. Pole shall match the design of decorative poles in the area.

(3) Antenna and accessory equipment size, location, and dimensional restrictions.

(a) General. The Company shall minimize to the extent possible the antenna and accessory equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment.

(b) Vertical clearance. All antennae and accessory equipment shall be a minimum of ten (10) feet above the existing adjacent grade and shall not be installed in such a manner as to obstruct the line of sight or pedestrian paths.

(c) Mounting/projection off pole. Unless the Company can demonstrate that more space is needed to be technically feasible, all antennae and accessory equipment including the enclosure shall be as close to the pole as possible and shall be mounted no greater than four (4) inches off the pole and the furthest point of all antennae and



accessory equipment including the enclosure shall not project more than twenty-eight (28) inches from the face of the pole.

(d) Antenna size and dimensional restrictions. Unless the Company can demonstrate that more space is needed to be technically feasible, the size of each antenna shall:

- (i) Be no greater than three (3) cubic feet;
- (ii) In the case of top mounted canister antennas, be no greater than six (6) feet in height and share a reasonably similar diameter as the top of the pole not to exceed sixteen (16) inches;
- (iii) In the case of omnidirectional antennas, be no greater than four (4) feet in height; and
- (iv) In the case of microwave dishes, be no greater than two (2) feet in diameter and no more than three (3) microwave dishes per pole.

(e) Accessory equipment size and dimensional restrictions. Unless the Company can demonstrate that more space is needed to be technically feasible, the size of accessory equipment shall:

- (i) Be no greater than twenty-eight (28) cubic feet total considering accessory equipment for all small wireless facilities attached to the pole collectively not including the electrical equipment;
- (ii) Be designed to be long and narrow along the pole with a reasonably greater vertical dimension than horizontal; and
- (iii) Be no greater than twenty-four (24) inches in width.

(f) All antenna equipment, excluding the antenna, is to be housed inside the pole, ground vault, an approved ground mounted cabinet, or properly camouflaged.

(g) Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall not dominate the structure or pole upon which they are attached.

(4) Concealment and objective aesthetic requirements. Small wireless facilities and any new, modified, or replacement pole for the collocation of small wireless facilities shall meet the following concealment and aesthetic requirements:

(a) Collocated replacement poles. Match neighboring pole design. Any pole replaced for the purposes of collocation shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

(b) Pole material reservation. The County reserves the right to require or allow certain pole material types.

(c) Concealment within poles. With the exception of wooden poles, all conduit, cables, wires and fiber must be routed within the pole.

(d) Concealment outside of poles. The full concealment of antennae, accessory equipment, and all conduit, cables, wires, and fiber is required and shall meet the following requirements:



- (i) Accessory equipment shall be covered with an enclosure
- (ii) Canister antennae shall be placed to look as if it is an extension of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole;
- (iii) Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the pole except completely within the approved enclosures or cabinets; and
- (iv) All cables, wires, and fiber associated with the small wireless facility shall be flush-mounted to the support structure where internal installation is not feasible and shall be shrouded or encased in a cover or conduit.

(e) Antenna and accessory equipment coloring. The antenna, accessory equipment, and all visible attachments, equipment, and hardware shall be colored to match the pole unless another color scheme is determined to be more aesthetically desirable by the County.

(f) The preferred location of a small wireless facility on a pole is the location with the least visible impact.

(g) Ground-mounted equipment in the rights-of-way is prohibited, unless such facilities are placed underground or the Company can demonstrate that pole-mounted or undergrounded equipment is technically infeasible. If ground-mounted equipment is necessary, then the Company shall submit a concealment element plan. Generators located in the rights-of-way are prohibited.

(h) The County may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the County. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the Company.

(i) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the Company, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

(5) Electrical service and equipment requirements:

(a) All electronic service equipment shall be installed in accordance with the applicable provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

(b) An electric meter, if required, will be support structure-mounted where feasible to the extent authorized by the support structure owner and electric utility.

(c) A separate electrical permit is required by the County for the electrical service.

(6) Cable strung small wireless facilities. Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards:

- (a) Each strand-mounted facility shall not exceed three cubic feet in volume;
  - (b) Only one strand-mounted facility is permitted between any two existing poles;
  - (c) The strand-mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five feet from the pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance;
  - (d) No strand-mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
  - (e) Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in preexisting equipment cabinets;
  - (f) Pole-mounted equipment shall comply with the all other requirements this section;
  - (g) Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand); and
  - (h) Strand-mounted facilities are only permitted on poles that have existing overhead wirelines.
- (7) Signage Requirements.
- (a) A plate no larger than four inches by six inches with the location of the pole and the pole owner's name, contact information, and emergency telephone number shall be permanently affixed to the pole or shroud.
  - (b) No signage, message or identification other than the manufacturer's identification or such other identification required by applicable law may be displayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than four by six inches); provided, that banners may be permitted as concealment element techniques where appropriate.

## **Section XII. Removal, relocation, or modification of small wireless facilities**

- (1) *Notice.* Except as provided in subsection 2, on 60 days prior written notice from the County, the Company shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities whenever the County has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any County improvement in or upon, or the operations of the County in or upon, the rights-of-way.
- (2) *Emergency removal or relocation of facilities.* In the event of an emergency, as the County may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property, the County retains the right and privilege, without prior notice, to cut, disconnect, remove, move, or relocate any small wireless facility or structure located within the rights-of-way. If circumstances permit, the County shall notify the Company and provide the

Company an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the Company promptly after cutting or removing a SWF.

(3) *Abandonment of facilities.* A wireless provider is required to notify the County at least 30 days prior to any intentional abandonment of a small wireless facility. Absent non-usage arising from lack of commercial power or other circumstances beyond the Company's control, a SWF shall be deemed abandoned if it remains unused for a period of more than one year. In the event of abandonment, the County may direct the Company to remove all or any portion of the SWF that the County Engineer determines would be in the best interest of the public health, safety and welfare to remove. If the Company fails to remove the abandoned facility within 90 days after such notice, the County may undertake to do so and recover the actual and reasonable expenses of doing so from the Company, its successors or assigns.

(4) *Damage and repair.* The County may require a Company to repair all damage to its rights-of-way to its functional equivalence before the damage. If the Company fails to make the repairs within 30 days after written notice, the County may effect those repairs and charge the Company the reasonable, documented cost of such repairs.

### **Section XIII. Insurance and security**

#### **(1) Insurance.**

(a) *Commercial general liability.* A Company shall, at its sole expense, maintain, throughout the term of its franchise and any extension or renewal thereof, and such other period of time during which the Company operates or is engaged in the removal of its facilities or structures (hereinafter referred to as "coverage period"), commercial general liability insurance using carriers licensed, authorized or permitted to conduct business in the State of Alabama and maintaining an A.M. Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual liability and personal and advertising injury, and shall include as additional insureds the County, its present and future officers, elected or appointed officials, volunteers performing authorized County functions, and agents and employees. Such insurance shall be in the amount of a combined single limit not less than \$1,000,000.00 per occurrence for both bodily injury (including death) and property damage liability and \$2,000,000.00 general aggregate. The Company shall insure any contractors and subcontractors providing services in connection with its franchise or permit maintain appropriate levels of insurance and that the County is included as an additional insured under each policy except workers compensation and employer's liability. Insurance will be written on an occurrence basis.

(b) *Commercial automobile liability.* A Company shall, at its sole expense, maintain during the coverage period commercial automobile liability insurance with a limit of \$1,000,000.00 combined single limit for any one accident or loss for bodily injury, including death, and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operations under its franchise or permit. Such insurance shall include the County and the County's present and future officers, elected or appointed officials, agents, representatives, volunteers performing authorized County functions, and agents and employees as additional insureds.



(c) *Workers' compensation and employer's liability.* A Company shall, at its sole expense, maintain, during the coverage period, workers' compensation coverage as prescribed by the laws of the State of Alabama and employer's liability coverage in an amount of \$1,000,000.00 each accident/disease/policy limit.

(d) *Umbrella or excess liability.* A Company shall, at its sole expense, maintain during the coverage period umbrella or excess liability insurance in the amount of \$1,000,000.00. Such insurance shall include the County and the County's present and future officers, elected or appointed officials, volunteers performing authorized County functions, and agents and employees as additional insureds.

(e) *Evidence of insurance; deductibles; approval; reservation.* At the time of entering a franchise agreement with the County and upon each policy renewal thereafter, a Company shall, at no cost to the County, furnish to the County certificates of insurance (or proof of self-insurance) evidencing all of the aforementioned types and limits of insurance to be in effect. The County reserves the right to require proof of self-insurance at any time and from time to time, at no cost to the County. A Company may maintain reasonable deductibles and the County reserves the right to review and approve such deductibles, which approval shall not be unreasonably withheld or delayed. The policies obtained by a Company and proof thereof, shall be subject to the County's reasonable approval. The County reserves the right to review these insurance requirements during the coverage period and upon prior written notice to, and review and acceptance by a Company, to adjust insurance coverages and their limits when deemed necessary and prudent by the County Engineer.

(f) *Maintenance of insurance policies; Company's coverage primary.* The liability insurance policies required hereunder shall be maintained by the Company through the coverage period. Upon receipt of notice from its insurer(s), the Company shall provide the County 30 days' prior written notice of cancellation or non-renewal of any required coverage. Company's coverage shall be primary and non-contributory to any other insurance carried by the County, if applicable to a loss.

(g) *No limit of liability.* The legal liability of Company to the County and any person for any of the matters that are the subject of the insurance policies required hereunder, shall not be limited by said insurance policies or by the recovery of any amounts thereunder.

(h) *Certificate of insurance.* Certificates of insurance, if any, shall include the County and the County's present and future officers, elected or appointed officials, volunteers performing authorized County functions, and agents and employees as additional insureds, in the case of commercial general liability, commercial automobile liability, and umbrella or excess liability insurance. Worker's compensation and employer's liability insurance shall waive rights of subrogation in favor of the County. All subsequent notices or certificates shall be delivered to the County Engineer. All deductibles under said policies shall be the sole responsibility of the Company.

(i) *Self-insurance.* Notwithstanding any other provision of this section to the contrary, a Company is given the option, at any time throughout the term of its franchise, to self-insure any or all of the types or limits of insurance coverage described in this section. If a Company elects to self-insure, it shall submit to the County with a statement certifying such self-insurance, and a request for the County to approve such self-insurance, together with sufficient information to show that it has sufficient financial resources to self-insure



without posing additional risk to the County. Provided that the Company provides adequate information concerning its financial resources, the County will not unreasonably withhold, condition, or delay its approval of Company's request to self-insure.

(2) *Security.* Security in the form of a Bond held by the County in the name of the Company will be required pursuant to the County's utility permit.

(3) *Commencement of work.* The Company shall not commence work in the rights-of-way of any kind, until the insurance and security requirements of this section and the utility permit have been complied with.

#### **Section XIV. Damages and defense**

(1) *Hold harmless and indemnification.*

(a) Company, by entering a franchise agreement or a SWF utility permit with the County, agrees to indemnify, defend, and hold the County and the County's present and future officers, elected or appointed officials, volunteers performing authorized County functions, agents, and employees whole and harmless from and against all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, judgments, and damages, of any nature and description, including any suit or claim for personal injury, property damage, defamation, antitrust, errors and omission, theft, fire, royalties, franchise fees, or infringement of copyright or patent rights, resulting from or arising out of or by reason of: (1) Company's actions pursuant to its franchise agreement, and each SWF utility permit issued thereunder, and the rights awarded thereunder, or the procedures leading thereto, (2) any act or omission of Company, its agents, employees, representatives, contractors, or sub-contractors, including in the construction, installation or operation of, or the provision of service over, the small wireless facilities or support structures in the County, or any portion thereof, (3) any failure by Company to comply with any applicable law or the terms and conditions of this resolution, the franchise agreement and each SWF utility permit, (4) Company's performance under the franchise agreement and each SWF utility permit, (5) the use of portions of Company's small wireless facilities or support structures by other persons, including other communications service providers, or (6) the presence of any hazardous substance or environmental hazard brought into the rights-of-way by Company or by any person acting on its behalf or under the rights granted under the franchise agreement and SWF utility permits.

(b) County shall be reimbursed or otherwise indemnified from Company for all costs for damages, repairs, and fines incurred as a result of any action and/or inaction that would cause County to finish, correct, alleviate, or work on a project/task deemed by County to be the responsibility of the Company. Reimbursement shall come from the Company in the form of direct payment based on the expenses incurred by the County or through the redeeming of the Bond held by the County in the name of the Company for said project.

(c) The foregoing obligations of subsections (a) and (b) shall survive the expiration, termination, or revocation of the franchise agreement.



(2) *Notice.* In order for the County to assert its right to be indemnified, defended, and held harmless, the County must notify Company within a reasonable time of any claim or legal proceeding which gives rise to such right.

(3) *Defense.* With respect to the indemnity obligations set forth in this section, Company shall provide the defense of any claims brought against the County by selecting counsel of Company's choice to represent the County and defend the claim, subject to the consent of the County, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the County from cooperating with and participating in the defense of any litigation by its own counsel at its own cost and expense. After consultation with the County, Company shall have the right to defend, settle, or compromise, at its cost and expense, any claim or action arising hereunder, and the authority to decide the appropriateness and the amount of any such settlement, provided, however, that any such settlement shall include, at a minimum, a full and final release of all claims against the County and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the County. In the event that the terms of any such settlement do not include a full and final release of the County, the claim or action raised against the County shall not be settled. All of Company's right to enter a settlement shall entail only payment of monetary amounts by Company, or obligations to be performed fully by Company, and under no circumstances shall Company have the power to bind the County to any obligation to pay any monetary amounts, perform any particular action, or refrain from performing any action (although the County may in its discretion independently agree to any such condition).

(4) *Indemnification not limited.* The indemnification obligations hereunder are not limited in any way by limitation of the amount or type of damages or compensation payable by or for Company under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required hereunder, or the terms, applicability, or limitations of any insurance held by Company.

(5) *No waiver of County rights.* The County does not and shall not be deemed to have waived any rights against Company which it may have by reason of Company's indemnification, or because of the acceptance by the County of Company's proof of insurance or deposit with the County of any insurance policies described herein.

#### **Section XV. Limitation of liability; immunity**

Except to the extent expressly provided for elsewhere in this resolution, the County shall be responsible for its own acts of negligence, or intentional or willful misconduct committed by the County for which the County is legally responsible, subject to defenses, immunities, and limitations of liability provided by applicable law; provided, however, notwithstanding anything to the contrary contained in this resolution and in no event shall the County, its present and future officers, elected or appointed officials, volunteers performing authorized County functions, agents or employees be liable to Company, its affiliates, officers, directors, agents, employees, customers, tenants, franchisees, licensees, contractors, subcontractors, or assigns for any special, indirect, or consequential damages, including any loss, expense, or damage to profits, business, revenue, or income (whether arising out of the damage to or destruction of the small wireless facilities or support structures, in whole or in part, transmission interruptions or problems, any interruption or degradation of service or otherwise), arising in any manner, including the County's negligence, and Company shall indemnify, defend, and save harmless the County and its present and future officers, elected or appointed officials, volunteers performing authorized County functions, agents, and employees from and against any and all claims, costs, losses,



expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, with respect to such special, indirect, or consequential damages. The foregoing obligations of this section shall survive the expiration, termination or revocation of the franchise agreement or SWF utility permit.

#### **Section XVI. Force Majeure.**

The Company shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Company's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

#### **Section XVII. Amendments.**

*Amendments.* The County may, at any time and from time to time, amend this resolution, as it shall find necessary in the lawful exercise of its enforcement powers and in the management of the rights-of-way or otherwise in the exercise of its control and authority over the rights-of-way and County property located therein.

#### **Section XVIII. Applicability**

(1) The provisions hereof shall be applicable to all small wireless facilities and support structures placed in the rights-of-way on or after the effective date of the resolution. Further, to the full extent permitted by applicable law, the provisions hereof shall be applicable to all existing small wireless facilities and support structures placed in the rights-of-way prior to the effective date of the resolution, except that any provision of this resolution regarding the design, size, composition, or location of small wireless facilities shall not apply to any facilities lawfully placed within any right-of-way prior to the effective date hereof.

(2) This resolution regulates the placement of small wireless facilities and support structures located or proposed to be located on the rights-of-way. This article does not apply to the placement of such facilities or structures on County-owned property not located within the right-of-way, which placement may be allowed only through a lease or similar agreement with the County. The placement of an antenna, facilities or equipment related to the following types of wireless communication services are exempt from regulation under this resolution: facilities owned or controlled, or dedicated to primary use by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this resolution are not intended to alter, affect or modify the provisions of existing franchises, licenses, use agreements or ordinances relating to the franchising of cable systems, cable operators, or any landline telecommunications and related facilities, providers or services. No provision of this resolution is intended to permit, regulate or authorize the placement by Company or other wireless provider of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that are used to transport telecommunication signals, data, messages, or cable services between support structures or between any other points on the right-of-way. In the event the Company or a wireless provider desires to place telecommunications or cable system equipment along the rights-of-way,

it must first obtain from the County a separate franchise or similar agreement or authorization to do so.

(3) *Existing agreements.* If a wireless provider has an existing franchise agreement, lease, right-of-way use agreement or other similar agreement with the County that addresses the placement of small wireless facilities or support structures which was in effect prior to the adoption of this resolution, the existing franchise or other similar agreement, at the County's sole option, shall remain in force for its remaining term (but not for any extension or renewal thereof), and its provisions shall control over any conflicting provisions of this resolution. Thereafter, the wireless provider's small wireless facilities or support structures shall be regulated by this resolution.

## **Section XIX. Enforcement**

### **(1) *Notice of violation; opportunity to cure.***

(a) If the County Engineer is of the opinion that a Company is in violation of a provision of this resolution, a franchise agreement or a SWF utility permit issued under the authority of this resolution, he shall provide Company with a written notice of violation describing the nature of the violation and requirements for correction.

(b) Within ten business days of receiving a notice of violation, Company shall present facts and arguments in refutation or excuse of the alleged violation, or present a plan for correction of the violation including an estimated schedule for completion of the corrective action. The County Engineer shall thereafter determine whether the violation has been refuted or excused, or may approve the corrective plan in whole or part, or require changes thereto. The reasonable cure period for any corrective action shall be established by the County Engineer, provided that the period shall not be less than 30 days in the case of any fees or other charges due and not less than 60 days in all other cases, except in the case of an emergency or except as otherwise expressly provided for in this resolution, the franchise agreement, or a SWF utility permit.

(c) During the cure period any action to prosecute the violation, including revocation of the franchise, shall be held in abeyance.

### **(2) *Revocation.***

(a) In addition to all other rights or remedies which the County may have pursuant to law or equity or under this resolution, a franchise agreement or a SWF utility permit issued hereunder, and subject to applicable law, the County may revoke the franchise agreement and all rights and privileges pertaining thereto including each and every SWF utility permit issued thereunder, or revoke one or more SWF utility permits, in the event that:

(i) Company is in violation of any material provision of this resolution, its franchise agreement, or a SWF utility permit, and the violation is not capable of being cured or Company has not, to the County's satisfaction, refuted or excused the failure to comply or has not complied with the cure provisions set forth hereinabove;

(ii) Company has engaged in an evasion or attempt to evade any material provision of this resolution, its franchise agreement, or a SWF permit, and fails or refuses to cure it;



- (iii) Company has perpetrated or attempted to perpetrate any fraud or deceit upon the County;
- (iv) There is any material misrepresentation of fact by Company in any permit application or report filed pursuant to this resolution.

(b) The County Engineer shall have the authority to revoke a SWF utility permit, subject to the right of appeal to the County Commission, provided the Company files a written notice of appeal with the County Engineer within 15 days of the revocation. The County Commission shall have the authority to revoke a franchise agreement and all SWF utility permits issued thereunder. Prior to such action, the County Commission shall schedule a hearing on the matter and Company shall be given not less than 30 days' advance notice of the date and time of such hearing and the grounds for revocation of the franchise agreement and permits. At such hearing, Company shall have the right to be heard on the matter and may present evidence on its behalf, including proof refuting or excusing the violation.

(c) Within 30 days of the conclusion of the hearing, the County Commission shall adopt a resolution revoking the franchise agreement or permits, or upholding the revocation of a franchise and/or permits, where it finds that there is a basis to do so and Company shall, thereafter, be notified in writing of the Commission's decision.

(3) *Stop work order.*

(a) The County Engineer may, at any time and from time to time, issue a stop work order for construction of all or any portion of the facilities or support structures when the County Engineer determines, in his sole discretion: (i) that, subject to the cure provisions in subsection (1) of this section, the activity is being performed contrary to the provisions of the SWF utility permit issued for the site; or (ii) that the activity has caused, or is likely to cause, a situation to exist that poses or would pose a clear and immediate danger to life or health; of a significant loss of property or services; or of significant damage to or destruction of the rights-of-way (there is no opportunity to cure in this instance). The order may be issued, at the County Engineer's option, on site or to the Company's contact person. The County Engineer will lift any such stop work order as soon as possible after he determines that the situation giving rise thereto no longer exists.

(b) It shall be a violation of this resolution for a Company, or those persons working on its behalf, to disobey a stop work order. Each day that the violation continues constitutes a separate offense, and may be subject to a civil penalty in an amount of \$500 per day for such site or sites.

(4) *Violation by wireless provider.* Subject to the cure provisions set forth in subsection (1) of this section, it shall be a violation of this resolution for a wireless provider to fail to comply with this resolution and any terms or conditions of its franchise agreement or one or more SWF utility permits. Each day that the violation continues, after the applicable cure period, if any, constitutes a separate offense and may be subject to a civil penalty in an amount of \$500 per day paid for such site or sites.

(5) *Unauthorized facilities or support structure.* It shall be a violation of this resolution for any person, its contractor, servant, agent, or employee, to construct, operate, or maintain, a small wireless facility or support structure in the rights-of-way without having entered a franchise agreement with the County and obtained a SWF utility permit for the particular location. Each day



a violation continues constitutes a separate offense. In addition to any civil penalty due in accordance with the provisions of this section, a wireless provider who has failed to obtain a SWF permit for a particular location shall pay an administrative fee of \$500.00 per day for each such location.

(6) The remedies, civil penalties, and administrative fees set forth herein are nonexclusive and the exercise of one or more of such remedies or penalties shall not preclude the exercise of another.

(7) In addition to the other remedies previously set forth herein, the County may take all necessary civil action to enforce the provisions hereof and may seek appropriate legal or equitable remedies or relief, including injunctive relief. The remedies set forth in this section are in addition to and cumulative of all other remedies provided by law.

#### **Section XX. Modification**

This resolution shall be deemed to be modified so as to comply with applicable federal laws, orders, or regulations, without the necessity of action by the County Commission, upon issuance of a final non-appealable federal order, rule, or regulation relating to small wireless facilities.

#### **Section XXI. Severability**

If any section, sentence, paragraph, clause, phrase or word of this resolution is for any reason held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this resolution, and it shall be construed to have been the intent of the County Commission to adopt this resolution without such unconstitutional, invalid, or inoperative part therein, and the remainder of this resolution shall be deemed and held to be valid as if such parts had not been included therein.

#### **Section XXII. Effective Date; Applicability**

This resolution shall be effective immediately upon its adoption. This resolution shall be in full force and effect within the rights-of-way of Baldwin County.

**ADOPTED** and **APPROVED** by the County Commission of Baldwin County, Alabama, on the 20<sup>th</sup> day of April, 2021.

**BALDWIN COUNTY COMMISSION**

By:   
JOE DAVIS, III  
Its: Chairman

ATTEST:

  
WAYNE DYESS  
County Administrator

