

**Pre-Meeting Agenda
Mountain Brook City Council
City Hall – Room A106
56 Church Street
Mountain Brook, AL 35213
November 23, 2015 5:45 PM**

1. Proposal from Nimrod Long & Associates and Schoel Engineering to design sidewalk connections and pedestrian bridge embankments to connect to our Phase 5b sidewalk project.(See attached contracts. These two items could be added to the formal agenda.)
2. Blueprint Birmingham \$5,000 funding for FY-2016 (See attached information. This item could be added to the formal agenda.)
3. Workplace Violence Policy – Steve Boone.(See attached information. This item could be added to the formal agenda.)
4. UBER ordinance-Whit Colvin (See attached information. This item may be added to the formal agenda.)
5. Three (3) items dealing with Small Cell Technology facilities-Steve Stine (See attached information. These three items may be added to the formal agenda.)

N i m e o d L o n g
A n d A s s o c i a t e s

L O N G

L a n d P l a n n e r s
L a n d s c a p e A r c h i t e c t s
U r b a n D e s i g n e r s

November 18, 2015

Mr. Sam Gaston
City Manager
City of Mountain Brook
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213

RE Sidewalks at Watkins Branch Bridge
Proposal for Landscape Architectural Services

Dear Sam:

We are pleased to offer this proposal for landscape architectural design services for the sidewalk connections and prefabricated bridge at Watkins Branch. The scope includes sidewalks connecting from the Cahaba Road and Mountain Brook Parkway crossings to a new bridge crossing for Watkins Branch. This will also include reconfiguring the existing Mountain Brook Parkway crossing and service access to the trail.

SCOPE OF SERVICES

We will prepare design drawings for the walkways, service access and plantings. We will also coordinate the company providing the prefabricated pedestrian bridge, civil engineers providing survey and permitting services associated with the bridge crossing. We will hire a structural engineer to design the bridge supports.

Our design services will include the following:

1. Coordination with Walter Schoel Engineering on topographic survey and permits;
2. Coordination with a local (Alabama) bridge designer on the bridge design and connection to trails;
3. Coordination with Structural Design Associates on bridge footing design; and
4. Design of changes to existing sidewalks and service access for the Watkins Branch Trail;
5. Location and design of decorative fence to direct pedestrians to the new route at the intersection with gated access for service and emergency vehicles; and
6. Landscape Planting Plans showing locations, species, sizes, quantities and planting details that will be incorporated into the full set of CD's.

We understand this work will be bid and paid for directly by the City of Mountain Brook without outside matching funds. We suggest the City purchase the bridge directly from the manufacturer. Costs of installing the bridge footings would be included in the bid for the sidewalk and other work.

Watkins Branch Pedestrian Bridge Crossing
November 18, 2015
Page 2.

COMPENSATION

We propose a lump sum fee \$9500.00 for our work outlined above. Fees for the structural engineers are included in NLA's fee. Fees for Walter School Engineering would be in addition to that and would be invoiced as reimbursable expenses to the City.

Reimbursable expenses such as repro-graphics, plotting, photocopying, mileage, long distance calls, etc. will be billed at 1.1 times the cost to the firm.

Thank you for considering this proposal for services. It's a pleasure to be involved in the design of Mountain Brook's outstanding system of sidewalks and trails – great projects for a great community.

Sincerely,

Nimrod Long and Associates, Inc.



Joel Eliason, ASLA
President

AGREEMENT FOR CONSULTING SERVICES
BETWEEN
NIMROD LONG AND ASSOCIATES
AND
WALTER SCHOEL ENGINEERING COMPANY, INC.
FOR
WATKINS BROOK TRAIL BRIDGE– CONSULTING SERVICES
Mountain Brook, Alabama
November 18, 2015

This **AGREEMENT**, entered into by and between **Nimrod Long and Associates**, hereinafter referred to as the **Client**, and **Walter Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for civil engineering and land surveying services associated with a pedestrian bridge planned for Watkins Brook, located in Mountain Brook, Alabama.

SCOPE OF WORK

1. TOPOGRAPHIC SURVEY

A field-shot topographic survey would be performed in the area proposed for the bridge. This survey would serve as a basis for architectural and civil design. The detailed scope is as follows:

- Establish site control from which all topographic and utility surveying will be referenced.
- Locate large trees.
- Locate topography and indicate spot elevations for all shots on survey
- Locate public sanitary sewer that runs through the area
- Process field survey data and prepare a Topographic survey on an appropriate scale to be determined by the Consultant.
- Furnish electronic and hard copies as required.

Lump Sum Fee \$ 5,250

2. DESIGN CONSULTING

The Consultant would assist the Client in the design and permitting of the bridge. The Design Plans are to be developed by the Client. The Consultant would prepare the Floodplain Development permit and No-Rise Certification for the bridge located in the Floodway of Watkins Brook. The Consultant would provide design consulting for erosion control, which would be included in the Construction Documents by the Client. The detailed scope is as follows:

- Perform design consulting on bridge location and configuration
- Coordinate with Jefferson County on sanitary sewer issues with proposed bridge
- Input bridge into HEC-RAS model to determine if the No-Rise condition exists
- Prepare Floodplain Development Permit and No-Rise Certification
- Develop erosion control design for inclusion in Client's plans
- Assistance with submittals and approvals

Lump Sum Fee \$ 8,540

3. CONSTRUCTION ADMINISTRATION

The Consultant will perform Construction Review to evaluate the Contractor's general conformance with plans and specifications. The Consultant will review Shop Drawings, and work with the Contractor and Client in solving any minor construction related problems that may arise. The detailed scope is as follows:

- Review of shop drawings
- Construction observation to be performed on an as-needed basis and at the direction of the Client
- Minor construction-related revisions – Revisions required as a result of field conditions or as agreed upon by the Client

Hourly Estimate \$ 1,000 (to be performed as needed, and billed hourly)

NOT IN SCOPE OF WORK

1. Selection or design of bridge, or bridge systems (by Client)
2. Submittals to FEMA (only a local no-rise review is assumed)
3. Sanitary sewer modifications
4. Easement descriptions or other formal approval work for allowing the bridge in the sanitary sewer easement. If formal approvals and documentation is required, these services would be performed hourly.
5. Stormwater ADEM NPDES permit (the site is under one acre and none should be required)
6. Civil Construction documents (plan set by Client; design input will be by mark-up or exhibit).

PAYMENT TERMS

The Consultant will bill the Client monthly based on work completed during the billing period. Work completed will be based upon a percentage of completion for Lump Sum Fees, and will be based on time and materials at the attached schedule of unit rates for Hourly Estimates and Not to Exceed agreements. Payments are due within thirty (30) days of invoice date. The Client's obligation to pay for services is in no way dependent upon the Client's ability to obtain financing, obtain approval from any governmental or regulatory agencies, real estate closing, receipt of payment from other parties or upon successful completion of the project. If payment is not received within thirty (30) days from date of invoice, the amounts may include a late charge of 1½ % per month, calculated from said thirtieth (30th) day. Should Consultant incur attorney's fees for collection of payment, the amount owed to Consultant shall include any and all said fees. Failure to make payment within sixty (60) days shall constitute a waiver of the right to dispute the accuracy and appropriateness of the invoice. In addition, Consultant reserves the right to suspend services under this Agreement until such time as payment is made in full for all amounts due for services rendered and expenses incurred has been received.

SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2015

Senior Principal	\$ 225.00 per hour
Principal	\$ 170.00 per hour
Chief Land Surveyor	\$ 170.00 per hour
Senior Project Manager	\$ 140.00 per hour
Project Manager 2	\$ 125.00 per hour
Project Manager 1	\$ 110.00 per hour
Senior Professional	\$ 120.00 per hour
Project Professional	\$ 105.00 per hour
Staff Professional	\$ 90.00 per hour
Senior Designer / Survey Draftsman / Specialist	\$ 90.00 per hour
Designer / Survey Draftsman / Specialist 2	\$ 80.00 per hour
Designer / Survey Draftsman / Specialist 1	\$ 70.00 per hour
Field Survey Party	\$ 150.00 per hour
Laser Scanning Field Crew	\$ 200.00 per hour
Laser Scanning Specialist	\$ 125.00 per hour
Intern/Support	\$ 55.00 per hour
Courier	\$ 25.00 per delivery
Transportation	\$ 0.50 per mile
Materials (Stakes and Hubs)	\$ 0.35 each
(Flagging)	\$ 2.50 per roll
(Iron Pins and Caps)	\$ 5.00 each
(Spray Paint)	\$ 5.00 per can

Printing and other reimbursable expenses will be charged at cost, and are not included in the fee basis described above. Sub-consultant invoices will be billed to the client at a rate of 110% of the sub-consultant invoice. Overtime rates may apply for work required during non-standard work hours.

GENERAL TERMS AND CONDITIONS

- 1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. No other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.
- 2) The Client hereby agrees that to the fullest extent permitted by law the Consultant's total liability to Client for any and all injuries, claims, losses, expenses of damages whatsoever arising out of or in any way relating to the project, the site, or this Agreement, from any cause or causes including but not limited to the Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty shall not exceed the greater of the total amount paid by the Client for the services of the Consultant under this contract or \$50,000.00, whichever is greater. The Consultant's liability shall expire one (1) year from the completion date of the provision of services for each phase of the work.
- 3) The figures given above and in the body of this Agreement are based on the Scope of Work as described herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will also be performed at the above unit rates, or a revised fee will be negotiated to the satisfaction of both the Client and Consultant at that time. The Consultant reserves the right to adjust these unit rates for inflation costs on a one-year interval from the date of this proposal.

- 4) All claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this agreement (other than as a result of Client's failure to pay amounts due hereunder) will be submitted to mediation before, and as a condition precedent to, other remedies provided by law. Mediation shall be held in the county where the project is located, and if the parties cannot agree on a mediator then one shall be appointed by the American Arbitration Association (AAA). Parties agree to split cost of mediation 50-50.
- 5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's services, and the Consultant assumes no duty to the Client to perform such services.
- 6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.
- 7) Consultant shall secure and maintain insurance as required by law or statutory requirements which will protect him from claims under the workers compensation acts and from claims for bodily injury, death, or property damage that may arise from the performance of his services under and pursuant to this Agreement. Certificates of such coverage will be provided to Client upon request.
- 8) All reports, plans, documents, or other materials resulting from the Consultant's efforts shall remain the property of the Consultant and are intended solely for the purpose of this Agreement. Any reuse by Client for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the user's sole risk.
- 9) This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure to perform in accordance with the terms of the agreement by the other party through no fault of the terminating party. If this Agreement is terminated, it is agreed that Consultant shall be paid for total charges for labor performed to the termination notice date, plus reimbursable charges.
- 10) Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control of either party.
- 11) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.
- 12) The Consultant shall not be responsible for construction site safety or construction procedures, nor will the Consultant be responsible for the quality of the work performed by the contractor or other consultants.
- 13) Consultant may, at Client's request and for Client's convenience, provide documents in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional instrument of service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

PROPOSAL ACCEPTANCE

SUBMITTED:

Consultant: Walter Schoel Engineering Company, Inc.

Signature: Walt Schoel III

Name: Walter Schoel III

Title: President

Date: 11/18//2015

ACCEPTED:

Client: Nimrod Long and Associates

Signature: _____

Name: _____

Title: _____

Date: _____

Please print or type the following information for the individual, firm or corporation responsible for payment.

Company: _____

Client or Client's authorized representative: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Client's Project Number: _____ **Client's Purchase Order Number:** _____



birminghambusinessalliance
THE CHAMBER FOR REGIONAL PROSPERITY

100 1100 6378
Sporn
11/5/2015

#8

Birmingham Business Alliance
505 20th Street North Suite 200
Birmingham, AL 35203

INVOICE

Sam S. Gaston
City of Mountain Brook
P O Box 130009
Birmingham, AL 35213

Invoice No.
149549

Customer ID
4044

Date Due
11/01/2015

	Qty.	Rate	Amount
B B A Investment 11/01/2015 to 10/31/2016	1.00	5,000.00	5,000.00
		Total	5,000.00
		Amt Paid	0.00
		Balance Due	5,000.00

Pay your dues online at <http://www.birminghambusinessalliance.com>.
Federal Tax Id#26-4629738

The BBA estimates that 90% of your investment may be deductible as a business expense.
For advice on all tax matters, please consult your tax advisor or an attorney.

By submitting payment, I affirm my acceptance and endorsement of the mission and objectives of the Birmingham Business Alliance, which include the promotion of economic development, business growth and business retention activity within the Birmingham region.

Birmingham Business Alliance 505 20th Street North Suite 200 Birmingham, AL 35203
Phone: (205)324-2100 Fax: (205)324-2560



CITY OF MOUNTAIN BROOK

P. O. Box 130009
Mountain Brook, Alabama 35213-0009
Telephone: 205.802.2400
www.mtnbrook.org

To: Sam Gaston, City Manager
From: Steven Boone
Date: November 13, 2015
Subject: Workplace Violence Policy
C: Mayor and members of the City Council

The City's workers' compensation carrier has suggested that the City Council consider adopting a workplace violence policy. I have prepared a policy and had it reviewed by Trip Umbach with Starnes, Davis & Florie. If approved, this policy will be included in the Employee Handbook as Exhibit K.

WORKPLACE VIOLENCE POLICY

Introduction

The City of Mountain Brook seeks to provide a work environment free from violence or threats of violence against individuals, groups, or employees, or threats against City property, including partner violence (as defined below) that may occur on our property. This policy requires that all individuals on City premises or while representing the City conduct themselves in a professional manner consistent with good business practices and in absolute conformity with non-violence principles and standards.

Definition

For purposes of this policy, workplace violence is defined as a single behavior or series of behaviors which constitute actual or potential assault, battery, harassment, intimidation, threats or similar actions, attempted destruction, or threats to City or personal property; that occur in a City workplace, while using City resources, at a City work location, or while an individual is engaged in City business.

City Response

The City of Mountain Brook strictly prohibits use of violence or threats of violence in the workplace and views such actions very seriously. The possession of weapons in the workplace (except by police officers authorized to carry a weapon), threats, threatening or menacing behavior, stalking, or acts of violence against employees, visitors, guests, or other individuals by anyone on City of Mountain Brook property will not be tolerated. Violations of this policy will lead to disciplinary actions up to and including termination of employment and the involvement of appropriate law enforcement authorities as needed.

Any person who makes substantial threats, exhibits threatening behavior, or engages in violent acts on City of Mountain Brook premises shall be removed from the property as quickly as safety permits, and may be asked to remain away from City of Mountain Brook premises pending the outcome of an investigation into the incident. People who commit these acts outside the workplace but which impact the workplace are also violating this policy and will be dealt with appropriately. The City of Mountain Brook reserves the right to respond to any actual or perceived acts of violence in a manner we see fit according to the particular facts and circumstances.

When threatening behavior is exhibited or acts of violence are committed, City of Mountain Brook will initiate an appropriate response. This response may include, but is not limited to, evaluation by City's designated Employee Assistance Professionals and/or external professionals, suspension and/or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or criminal prosecution of the person/persons involved.

No existing City policy, practice, or procedure should be interpreted to prohibit decisions designed to prevent a threat from being carried out, a violent act from occurring, or a life-threatening situation from developing.

Reporting Procedure

City of Mountain Brook personnel are responsible for notifying the designated management representative of any threats which they have witnessed, received, or have been told that another person has witnessed or received-including those related to partner violence. Even without an actual threat, personnel should also report any behavior they have witnessed which they regard as threatening or violent, when that behavior is job related or might be carried out on a City controlled site or is connected to City employment. Employees are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who were threatened or were the focus of the threatening behavior. If the designated representative is not available, personnel should report the threat to their supervisor or another member of the management team.

City of Mountain Brook understands the sensitivity of the information requested and has developed confidentiality procedures, which recognize and respect the privacy of the reporting employee(s). Consistent with the values of the City, people should take action in ways that maintain respect and dignity for individuals while acting in an accountable and swift manner to address the situation.

Protective or Restraining Orders

All individuals who apply for and obtain a protective or restraining order which lists City locations as being protected areas, must provide to their department supervisor or designated management official a copy of the petition and order.

Designated Management Representative

Title: City Manager
Telephone: 205/802-3803
Location: City Hall, 56 Church Street, Mountain Brook, AL 35213

Partner Violence and the Workplace

The City of Mountain Brook recognizes the impact of partner violence on the workplace. Partner violence is defined by the City as abusive behavior occurring between two people in an intimate relationship. It may include physical violence, sexual, emotional, and psychological intimidation, verbal abuse, stalking, and economic control.

The City of Mountain Brook intends to make assistance available to employees involved in partner violence. This assistance may include: confidential means for coming forward for help, resource and referral information, special considerations at the workplace for employee safety, work schedule adjustments, or leave necessary to obtain medical, counseling, or legal assistance, and workplace relocation, if available. In responding to partner violence, the City will maintain appropriate confidentiality and respect for the rights of the employee involved.

When employees confide that a job performance or conduct problem is related to partner violence, in addition to appropriate corrective or disciplinary action consistent with City policy and procedure, a referral for appropriate assistance should be made to the employee.

Leave Options for Employees Experiencing Threats of Violence

The City of Mountain Brook will make every effort to assist an employee experiencing threats of violence. If an employee needs to be absent from work due to threats of violence, the length of the absence will be determined by the individual's situation through collaboration with the employee, their department supervisor, and City Manager.

Employees, managers, and supervisors are encouraged to first explore paid leave options that can be arranged to help the employee cope with the situation without having to take a formal unpaid leave of absence. Depending on circumstances, this may include:

- Arranging flexible work hours so the employee can seek protection, go to court, look for new housing, enter counseling, arrange child care, etc.
- Considering use of sick time, compensatory time, paid leave, informal unpaid leave, etc., particularly if requests are for relatively short periods.

Suggested Procedures for Safety and Protection of Employees Experiencing Threats of Violence

Employee

- Encourage the employee to save any threatening e-mail or voice-mail messages. These can potentially be used for future legal action, or can serve as evidence that an existing restraining order was violated.
- The employee should obtain a restraining order that includes the workplace, and keep a copy on hand at all times. The employee may consider providing a copy to the police, or his/her supervisor.
- The employee should provide a picture of the perpetrator to reception areas and/or security.
- The employee should identify an emergency contact person should the employer be unable to contact the victim.
- If an absence is deemed appropriate, the employee should be clear about the plan to return to work. While absent, the employee should maintain contact with the department supervisor.

Employer

- Arrange for the victim to have priority parking near the building.
- Have calls screened, transferring harassing calls to security, or have the employee's name removed from automated phone directories.
- Limit information about employees disclosed by phone. Information that would help locate a victim or indicates a time of return should not be provided.
- Relocate the employee's workspace to a more secure area or another site.

- **The employer should have trained EAP professionals or external professionals assist the employee with development of a safety plan**
- **Work with local law enforcement personnel, and encourage employees to do so regarding situations outside the workplace.**

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 26 OF THE CITY CODE OF THE CITY OF MOUNTAIN BROOK, ALABAMA

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

1. **Amendatory Provision.** Chapter 26, Article VII, Section 26-227 (y) "*Schedule Y - Motor vehicle carriers and express companies*" of the City Code shall be amended by repealing subsection (y) in its entirety and replacing it with the following:

"(y) *Schedule Y - Transit and passenger transportation.*

- (1) Each person, firm, corporation, company, association, partnership, agency or business engaged in the business of transit or passenger transportation in the City, either directly or indirectly through agents, employees, independent contractors or other representatives ("Licensee") shall pay a license tax, and each Transportation Network Company ("TNC") that operates in the City shall pay a fee as follows:
 - a. Motor carriers, as defined in the Code of Alabama, shall pay a license tax as provided in Ala. Code §37-3-33 (1975).
 - b. Express companies as, defined in the Code of Alabama, shall pay a license tax as provided for in Ala. Code §11-51-126 (1975).
 - c. A TNC shall pay a flat fee of \$500.00 per year.
 - (i) TNC means a corporation, partnership, sole proprietorship, or other entity that uses a digital network to connect TNC riders to TNC drivers who provide TNC Services. A TNC shall not be deemed to control, direct or manage the personal vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract.
 - (iii) TNC Services means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the TNC vehicle.

(iii) TNC vehicle means a vehicle that is used by a TNC driver and is: (a) owned, leased or otherwise authorized for use by the TNC driver; and (b) not a utility, common carrier, for-hire vehicle, motor vehicle carrier, contract carrier, transportation company, express company, taxicab, or limousine.

(iv) The City shall permit each TNC applicant that meets the requirements for a TNC set forth in this Section and pays the annual fee to operate in the City.

(v) TNCs are not motor carriers, express companies, utilities, common carriers, for-hire vehicles, contract carriers, transportation companies, or taxicab or limousine services pursuant to Chapter 37 of the Alabama Code, nor are TNCs Licensees.

(vi) TNC drivers shall not be required to pay such fee, license tax, or license fee, nor shall they be required to obtain a commercial permit or license from the City .

d. All other persons or entities engaged in transit or the transportation of passengers shall pay a flat license fee of \$500.00 per year.

(2) *Background Checks.* Each Licensee or TNC shall conduct, or have a third party conduct, background checks on any and all for-hire vehicle drivers or TNC drivers. The background check, shall at a minimum, include (a) Multi-State/Multi-Jurisdiction Criminal Records Locator or similar commercial nationwide database search with validation (primary source search); (b) National Sex Offender Public Website search; and (c) a driving history search.

Background checks shall be conducted prior to the driver's provision of transportation service or TNC Service in the City and annually thereafter..

(3) *Driver Qualifications.* No Licensee shall permit any person employed or otherwise engaged by Licensee to provide transportation services, and no TNC shall allow an individual to act as a TNC driver on its digital platform, who:

a. Has been convicted, within the past seven years of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a

motor vehicle to commit a felony, a crime involving property damage and/or theft, acts of violence or violation that constitutes a felony under the Anti-Terrorism Act of 2002, Ala. Code §§ 13A-10-150 et al. or a similar felony offense under the laws of another jurisdiction.

- b. Is a match in the National Sex Offender Public Website.
- c. Has accumulated more than three (3) moving violations or a major driving violation, including but not limited to attempting to evade the police, reckless driving, or driving on a suspended or revoked license, during the three year period prior to the driving history check.
- d. Who does not possess a valid driver's license, proof of vehicle registration and automobile liability insurance or who is under nineteen (19) years of age.

Records shall be kept by the licensee or TNC showing that the above qualifications have been met for each person performing transportation or TNC services.

(4) (a) *Insurance for TNC vehicles.* All TNC vehicles shall be covered by insurance which meets the following criteria, at a minimum:

- (i). Automobile liability insurance of at least one million (\$1,000,000) dollars per incident involving a TNC driver for death, personal injury and property damage while providing TNC Services in the City.
- ii. Such insurance may be maintained by the TNC Driver, the TNC, or any combination thereof.
- iii. Certificates of insurance shall be kept by the TNC showing that the above insurance requirements have been met for each person performing TNC Services.

(b) *Insurance for non-TNC for-hire vehicles.* All non-TNC for-hire vehicles shall be covered by insurance which meets the following criteria, at a minimum:

- i. Automobile liability insurance of at least one million (\$1,000,000) dollars per incident involving a for-hire vehicle driver

for death, personal injury and property damage while providing passenger transportation services in the City.

ii. Such insurance may be maintained by the for-hire vehicle driver, the Licensee, or any combination thereof.

iii. Certificates of insurance shall be kept by the Licensee showing that the above insurance requirements have been met for each person performing transportation services pursuant to the license.

- (5) *Rate Disclosure.* Each Licensee and TNC shall adopt procedures, practices or policies requiring the disclosure of passenger rates, estimated fares, suggested fares or the means of computing the fares to passengers prior to each passenger trip. Such disclosure may be by electronic or other means.
- (6) *Motor Carriers.* Motor carriers, express companies or other transportation companies operating under the jurisdiction of the Alabama Public Service Commission or other State regulatory body shall be permitted to obtain a City license upon submission of a copy of the motor carrier certificate issued by the public service commission and, in such case, shall not be required to demonstrate compliance with the above subsections (2) through (5) as a condition of the license.
- (7) *Government Owned Transportation Companies.* Transportation companies owned or operated by a municipality, a county government, the state of Alabama or the federal government shall be exempt from the provisions of this section.
- (8) *Other Exemptions.* Persons engaged by a passenger to provide transportation in a vehicle owned by the passenger and persons who transport passengers on a not-for-profit basis shall be exempt from the provisions of this section.

2. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
3. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be

construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: The ____ day of November, 2015.

Virginia C. Smith
Council President

ADOPTED: The ____ day of November, 2015.

Lawrence T. Oden
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook at its regular meeting held on November ____, 2015, as same appears in the minutes of record of said meeting

Steven Boone, City Clerk

Sam Gaston

From: Steve Stine
Sent: Friday, November 20, 2015 11:53 AM
To: 'Steve Boone'
Cc: 'Sam Gaston'; whitcolvin@bishopcolvin.com; Dana Hazen
Subject: Small Cell Technology Ordinances and Franchise Agreement with Crown Castle - Materials for Monday Night Council Meeting
Attachments: ORD - Small Cell Technology Ord Nov 18 for Chap 126.docx; ORDINANCE Amend Chapter 14 Fees_Nov18.docx; Crown Castle_MountainBrookFranchiseAgmt_Nov 19 w Change in Sec 6.docx

Steve, as promised and per your request, attached are the materials to send to the City Councilors concerning the Small Cell Technology matters on Monday night's meeting Agenda:

1. Small Cell Technology Facilities Ordinance – Nov 18 Version
2. Ordinance to Amend Chapter 14 – Fees Small Cell Facilities
3. Proposed Franchise Agreement with Crown Castle – Nov 19 Version
4. A Nov 20 Memorandum that I have prepared to provide the Councilors an overview of these matters.

Also, please remember that we need to attach the photos that Dana sent on Wednesday afternoon and proposed as the Exhibits to the Facilities Ordinance, and include those photos in the Council packets. Before you attach and circulate that, could you please remove the "Verizon" heading on the photos and the page with words from these photos as neither of this extraneous information needs to be in the final form of the Ordinance? Thanks.

Steve Stine
1910 First Avenue North
Birmingham, Alabama 35203
Phone : (205) 251-2881
Fax : (205) 254-3987
Email: sstine@bishopcolvin.com



This email has been checked for viruses by Avast antivirus software.

www.avast.com

MEMORANDUM

To: Mountain Brook City Councilors

From: Steve Stine - Bishop, Colvin, Johnson & Kent

Re: Overview Small Cell Technology Matters on City Council Agenda for November 23, 2015

Date: November 20, 2016

The following three related matters are on Monday night's Council Agenda:

- (a) An Ordinance to adopt regulations for the installation and use of Small Cell Technology Facilities on the ROW and private properties in the City. If this Ordinance is adopted, these new regulations will be placed in a new Chapter 126 in the City Code;
- (b) An Ordinance to Amend Existing Chapter 14 to provide for new permit and annual license fees for placing Small Cell Technology facilities in the City; and
- (c) A Franchise Agreement between the City and Crown Castle NG East, LLC (Crown Castle) that will allow it to construct a Small Cell Network on the ROW in the City.

Below is a brief overview of these matters and Small Cell Technology.

Background

The services provided by cellular and other wireless carriers heavily rely on antenna, signal converters and related equipment that those carriers locate on large facilities known as "macro towers." Chapter 125 of the City Code regulates the placement, use and operation of such macro towers in the City. However, locating more macro-cell towers in any community is problematic for all concerned. Further, communities like Mountain Brook have "coverage gaps" where some wireless carriers are unable to provide wireless service or may offer sub-standard service because of topography, the unavailability of macro cell towers, the difficulties associated with acquiring new macro towers and other factors.

Technologically, the use of Small Cell Technology facilities has been advanced by the wireless industry as a means to meet the growing demand for cellular and other wireless services, to fill coverage gaps and minimize the demand for new macro towers. Photographs that illustrate the types of Small Cell Technology facilities in question and types of requested installations are attached to the proposed Small Cell Technology Facilities Ordinance.

In the recent past, the Federal Communications Commission (FCC) has enacted regulations that effectively mandate that local governments allow the installation of Small Cell Technology Facilities on a relatively expedited basis. However, these regulations also recognize that, provided a local government does not enact regulations that prohibit or have the effect of prohibiting interstate or intrastate telecommunications, that government may exercise its general police powers to regulate the placement and use of such facilities in their jurisdictions.

At a pre-Council meeting earlier this year, Crown Castle provided preliminary information concerning its request for authorization to install a Small Cell Technology Network on the City Right of Way (ROW). Crown Castle owns macro towers in multiple locations and leases those facilities to wireless carriers. Further, it holds a certificate issued by the Alabama Public Service Commission to provide telecommunications service in this State. Crown Castle is not a cellular carrier itself or currently engaged in the business of delivering wireless or other telecommunication messages and signals directly to end users. Instead, its primary line of business appears to that of a facility provider (i.e., a carrier's carrier") that constructs, installs and operates facilities that are used by those telecommunication carriers who directly serve end users.

After Crown Castle's prior presentation, Dana Hazen, Steve Boone, Sam Gaston and I have had many meetings and discussions, and considerably interacted with representatives of Crown Castle (including its local counsel, Andy Rotenstreich) concerning its request. The City Staff and I have investigated pertinent matters and drafted the proposed Ordinances. Further, multiple drafts of them and the proposed Franchise Agreement, and other information pertinent to these matters, have been exchanged between representatives of the City and Crown Castle in the recent past.

After careful consideration of all matters, the City Staff and I recommend approval of three Small Cell Technology matters that are on Monday's agenda in substantially the form presented to the Council. This approval will provide the City a regulatory framework that balances the interests of all concerned, is consistent with federal and state regulations and laws, will benefit the citizens of the City by improving the quality and availability of wireless communication service to them, and will reasonably accommodate Crown Castle's request.

Interestingly, it is believed that Mountain Brook may be the first local government in Alabama to consider adoption of Small Cell Technology regulations and implement this Technology. In fact, Crown Castle has identified the City as a "priority area" for the wireless service improvements that should transpire in the City if the Council approves the subject matters.

Highlights of Proposed Ordinances and Agreement

As discussed above, the Small Cell Technology Facilities Ordinance is intended to allow the wireless industry to install Small Cell facilities at locations in the City needed by wireless carriers to improve service, but simultaneously regulate the placement and use of those facilities in a manner that is consistent with the nature, aesthetic qualities and character of the City. The key features of this Ordinance and the proposed Franchise Agreement are noted below:

Facilities Ordinance

1. No Small Cell antenna, converter, or other accessory equipment that is placed on a pole or other structure on the ROW may be installed without a permit from the City.
2. Any request by the applicant to install a new pole on the ROW must be approved by the City Council.

3. In addition to utility poles, facilities may be placed on Traffic Signals, Street Lights owned by the City, except that no attachments may be made to the City's decorative lights in the 3 Villages.
4. Any wireless carrier, certified telecommunication provider or party authorized by a carrier can apply for a Small Cell facilities permit.
5. Requests for permits will be administratively considered and made by the City Manager, and not submitted to the Planning Commission for consideration.
6. Decisions on permit requests must be made within 60 days after the applicant provides all information required in the Ordinance.
7. The factors to be considered by City Manager in determining whether to issue a permit at a requested location include the following: whether options to collocate the facilities on an existing utility pole or structure have been exhausted; the demonstrated technological need for the facilities at the requested location; the visual impact of the facilities; the character of the area; whether the facilities are aesthetically consistent with the immediate area; the height that the facilities may extend over an existing structure; and whether the proposed installation will interfere with the public's use of the ROW.
8. In the permitting process, the burden is on the applicant to show that its proposal is the minimal physical installation that will meet the needs of the wireless service carrier.
9. Permits are also required before placing Small Cell facilities on private properties. In addition to the other factors that are considered with respect to permitting of facilities on the ROW, stealth technology requirements and setback regulations apply when Small Cell facilities are placed on buildings in the City.

Ordinance to Amend Chapter 14

This proposed amendment will set the following new fees related to Small Cell facilities in the City:

1. Permit Application and Review Fee - \$200;
2. Initial Permit Fee per Structure -\$100; and
3. Annual License Fee for each structure on ROW on which Facilities are placed - \$500.

Franchise Agreement between City and Crown Castle

The purpose of this Agreement is to grant Crown Castle a franchise to construct, maintain and operate a Small Cell Network on the City ROW. This Network will include not only the antenna, converters and other Small Cell facilities that are placed on structures, but also include fiber lines, hubs, and other equipment that connect the facilities on the structures to the remote macro towers used by wireless carriers. Provided Crown Castle complies with the permitting and other requirements of the proposed

Small Cell Technology Facilities Ordinance, the approval of this Agreement will allow Crown Castle to construct its contemplated Network.

The franchise proposed for Crown Castle is non-exclusive. In the future, the City may be asked to grant wireless carriers and other entities that are similarly situated to Crown the right to build their own Small Cell networks in the City.

The terms of the proposed Agreement with Crown Castle are substantially similar to other Franchise Agreements entered by the City. Particularly, it is modeled on the franchise agreement entered by the City earlier this year with Southern Light, LLC for it to construct a fiber optic telecommunication system in the City. The initial term of the proposed Franchise Agreement is 10 years, and, like the City's agreement with Southern Light and other franchisees, Crown commits in the proposed Agreement to pay the City a Franchise Fee of 5% of its gross revenues from its operations in the City.

I and other members of the City Staff who are familiar with these matters will be at Monday night's meeting to address any questions that you may have concerning these matters. Also, Crown Castle's local counsel and their area Governmental Affairs representative are expected to attend that meeting.

Cc: Sam Gaston
Steve Boone
Dana Hazen

ORDINANCE NO. _____

AN ORDINANCE TO ADOPT REGULATIONS FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF MOUNTAIN BROOK, ALABAMA

WHEREAS, the City Council of the City of Mountain Brook, Alabama seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement along City right of ways and on private properties of Small Cell Technology facilities (as hereinafter defined) and structures required to furnish those services; and

WHEREAS, the installation, expansion, and maintenance of Small Cell Technology facilities and associated structures on or along City rights-of-way and on private properties has significant impact upon: (1) the aesthetic values and historic character of the City; (2) safe use and passage on or along the right-of-way by the public; and (3) properties and property values in the City in areas where such structures are placed; and

WHEREAS, the Federal Telecommunications Act (the "Act") and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of Small Cell Technologies facilities and structures; and

WHEREAS, as provided in this ordinance, the City seeks to mandate, where feasible, the collocation of Small Cell Technology facilities on existing utility poles and other support structures as opposed to installation of new structures; and

WHEREAS, the above-noted collocation and other provisions of this ordinance are intended to be consistent with the Act and its associated regulations; and

WHEREAS, the adoption of the regulations, procedures and requirements in this ordinance will permit personal wireless service providers to enhance the provision of those services and protect the public welfare, health, safety and interests of the City's citizens.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

A new Chapter 126, will reads as follows, is hereby adopted and shall be inserted in the Mountain Brook Municipal Code:

Chapter 126 - Small Cell Technology Facilities

Section 1. Definitions

The terms below have the following meanings for purposes of this ordinance.

(1) "Abandonment" or "Abandon(s)" means that, following the placement of Small Cell Technologies facilities (and associated accessory equipment) or support structures in the City pursuant to a permit issued to personal wireless service provider or applicant, any of the following has occurred: (a) for any reason the facilities cease to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of ninety (90) days; (b) the City revokes the permit for placement and use of those facilities due to nonpayment of applicable fees, the failure of the provider or applicant to comply with conditions in the permit or in this ordinance concerning them, or other valid reason; or

(c) the provider or applicant fails to perform any of their responsibilities, obligations and requirements in this ordinance or in a permit that relate to the installation, construction, maintenance, use or operation of the facilities, accessory equipment or support structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the provider or applicant.

(2) "Accessory Equipment" means any equipment other than an antenna that is used in conjunction with Small Cell Technology facility arrangements. This equipment may be attached or detached from a Small Cell Technology Wireless Support Structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio heads, fiber optic cables and wiring, meters, and power switches on or in the immediate vicinity of a support structure.

(3) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Technology support structure and is used to communicate personal wireless services.

(4) "Applicant" means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility and related accessory equipment or support structure in the City or an entity certified by the Alabama Public Service Commission as a telecommunication service provider.

(5) "Application" means a formal request submitted to the City for a permit to install, construct, modify or maintain a Small Cell Technology facility and related accessory equipment or support structure.

(6) "City" shall mean the City of Mountain Brook, Alabama.

(7) "City Council" shall mean the City Council of the City of Mountain Brook, Alabama.

(8) "City Manager" shall mean the person appointed by the City Council as the City Manager of the City. The City Manager includes any employee of the City or other person designated by that Manager to perform the responsibilities in this ordinance.

(9) "Collocation" means the placement or installation of new Small Cell Wireless Technology Facility or related accessory equipment on an existing utility pole or other support structure that is owned, controlled or leased by a utility, the City or other person or entity.

(10) "Personal Wireless Service Provider" or "Provider" means an entity that provides personal wireless communication services to the public or citizens of the City on a commercial basis, and is authorized by the FCC to provide those services.

(11) "Private Property" means real property located in the City that does not lie within the public right-of-way.

(12) "Public Right-of-Way" means the surface and space above and below the public rights of way, streets, avenues, highways, roads and dedicated municipal easements within the City's corporate boundaries.

(13) "Small Cell Technology Facility(ies)" means and includes the following types of structures: (a) antenna; and (b) accessory equipment. Photographs and illustrations of the types, relative dimensions

and scale of these facilities that are contemplated by this ordinance are attached as Attachment A to the permanent record of this ordinance that is maintained by the City Clerk.

(14) "Small Cell Technology Wireless Support Structure" or "Support Structure" means a freestanding structure designed or used to support, or capable of supporting, Small Cell Technology Facilities, including, but not limited to, utility poles, street light poles owned by the City or utilities, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign or flag pole. These terms do not include the City's decorative and architecturally significant street lights that are installed in its villages as those decorative lights are inappropriate for use as a Support Structure.

(14) "Stealth Technology" means a method(s) of concealing or minimizing the visual impact of a Small Cell Technology facility (and associated accessory equipment) and support structure by incorporating features or design elements which either totally or partially conceal those structures. The use of these design elements is intended to produce the result of having said facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the facilities are an architectural component of the support structure. Photographs and illustrations of examples of the types of Stealth Technology that may be used when buildings are utilized as support structures and other applications of Stealth Technology that are contemplated by this ordinance are attached as Attachment B to the permanent record of this ordinance that is maintained by the City Clerk.

Section 2: Permit Required to Place Small Cell Technology Facilities in the Public Right of Way:

(a) A personal wireless service provider or applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology facility (and associated accessory equipment) on any support structure that is located on the public right of way, or substantially modifying the position or characteristics of any such existing facility thereon.

(b) The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manager's reasonable discretion, it should be issued for the location and in the manner requested by the applicant. In this process, the burden is on the personal wireless service provider or applicant to demonstrate that the placement of the proposed facility and associated accessory equipment or support structure on the public right of way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this section, this permitting process will not require the approval of any City Board or City official other than the City Manager.

The factors, requirements and guidelines that the City Manager may consider and will apply when determining whether to issue a permit for placement of facilities and associated structures on the public right of way include, but are not limited to, the following:

- (i) the demonstrated need for placing the structures at the requested location and geographic area in order to deliver or enhance personal wireless service;
- (ii) the visual impact of placing the structures in the subject area;
- (iii) the character of the area in which the structures are requested, including surrounding buildings, properties and uses;

(iv) whether the appearance and placement of the requested structures is aesthetically consistent with the immediate area;

(v) whether the structures are consistent with the historic nature and characteristics of the requested location;

(vi) the applicant's network coverage objective and whether the applicant should use other available or previously unconsidered alternative locations to place the structures;

(vii) Colocation. To the extent practical, all facilities and associated accessory equipment that are placed in the City shall be attached to a pre-existing support structure that is owned, controlled or leased by a utility, franchisee, the City or other entity. If the applicant demonstrates that no colocation opportunities exist in the area where a technologically documented need for a facility exists, the applicant may request that a new utility pole or other support structure be installed in that area for purposes of constructing the facilities. Before any new support structure is permitted, each of the following must occur:

(1) the applicant must have provided the City written evidence that no colocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the applicant has taken all actions to achieve colocation in the requested location or area, that the applicant has pursued but been denied access to all potential colocation sites in the subject area (and the reasons any such denial(s)), and otherwise show that the applicant is unable to co-locate on an existing support structure;

(2) the City Manager must recommend the placement of a new support structure in the public right of way; and

(3) the City Council must approve the recommendation of the City Manager to issue a permit that includes the placement of a new support structure in the public right of way. The City Council will consider whether to approve any such new structure at a regular Council meeting that will be conducted as soon as practical after the City Manager's recommendation is made;

(viii) if a facility is attached to a utility pole or other support structure in the public right-of-way, no antenna or other part of the facility shall extend more than five (5) feet above the height of the support structure; provided that, in the event that the applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the City Manager may permit a facility to extend up to ten (10) feet above the height of such support structure;

(ix) accessory equipment shall, if reasonably possible, be placed at least 10 feet above the ground;

(x) the color of antenna and accessory equipment shall be compatible with that of the support structure;

- (xi) the facility (including the accessory equipment) shall not be illuminated;
- (xii) whether the proposed installation could cause harm to the public or pose any undue risk to public safety;
- (xiv) whether the proposed installation may interfere with vehicular traffic, passage of pedestrians or other use of the public right of way; and
- (xv) if the proposed installation will disturb conditions on the public right of way, whether the applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.

(c) Application Process.

(i) At a minimum, each application for a permit shall contain all of the following:

- (1) engineering drawings depicting the type of facilities, support structure and means and points at which those will be attached to a support structure;
- (2) map(s) designating with specificity the location(s) of the requested facilities;
- (3) the geographic coordinates of all antenna and other proposed facilities;
- (4) if the facilities will be located on a support structure on the public right of way that is owned by any entity other than the City or the provider/applicant, a copy of any license, lease, agreement or other documentation indicating that the owner of that structure authorizes the facilities to be attached; and
- (5) if the provider or applicant requests permission to place facilities on a new support structure, the substantiation therefor required by Section 2(b) (vii) in this ordinance.

Within 30 calendar days after an application for permit is submitted, the City shall notify the applicant in writing if any information is needed to complete that application or supplemental information is required to process the request.

(ii) Time for Processing Application. Unless another date is specified in a written agreement between the City and the provider or applicant, the City, within sixty (60) calendar days of the date an application for a permit is filed, shall:

- (1) make its final decision to approve or disapprove the application for a permit; and
- (2) advise the provider/applicant in writing of its final decision.

An application shall not be deemed filed or complete until the applicant has submitted to all documents, information, forms and fees specifically enumerated in this ordinance that pertain to the location, construction, or configuration of the facilities or support structures at the requested location(s). To the extent additional information is required to complete the application, the 60 calendar day review period set forth in this subsection shall not begin to run until the applicant has provided any missing or requested supplemental information.

(iii) Reconsideration/Appeal. Any applicant that desires reconsideration of an administrative decision by the City Manager to deny a request for a permit to place a facility or support structure on the public right of way may seek review, modification or reversal of that decision by the City Council by submitting a request for reconsideration with the City Clerk within twenty (20) days following the City Manager's decision. That request for reconsideration will be considered by the City Council at a regular Council meeting that will be conducted as soon as practical after the request for reconsideration is made. If no request for reconsideration is submitted, the decision of the City Manager will be final.

Additionally, the applicant, within (30) days following a decision by the City Council to deny a request for reconsideration or a decision by the City Council to not approve the placement of a new support structure on the public right of way, may appeal either of those decisions by the City Council to the Circuit Court of Jefferson County, Alabama. If no appeal of those decisions of the City Council is made, those will be deemed final.

(d) Additional Requirements. Any personal wireless service provider or applicant to whom a permit is issued and that places facilities and associated structures on the public right of way also shall comply with the following requirements as long as those facilities and support structures are on or under the public right of way:

(i) Prior to installing the facilities or support structures, the provider or applicant shall provide the City a Certificate of Insurance evidencing that it has obtained and will maintain the following types of insurance: (1) General Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of facility or support structure placed on or along the public right of way by the provider or the applicant (or any of their contractors) with minimum limits of \$1,000,000 per occurrence; and (2) Workers Compensation Insurance as required by statute. The General Liability coverage shall list the City as an additional insured, and may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers who are reasonable acceptable to the City and authorized to transact business in the State of Alabama. On an annual basis following initial installation, the provider/applicant also shall furnish the City Manager a Certificate indicating that the above-noted coverage remains and will remain in effect.

(ii) All facilities and associated structures shall be installed, erected, maintained and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.

(iii) Following the installation of any facilities and associated structures, the provider or applicant, upon reasonable request and for good cause, shall furnish the City Manager a written certification from a licensed professional engineer in the state of Alabama stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the facilities and associated structures have been damaged, are not functioning in compliance with applicable laws and regulations or otherwise pose a hazard to the public. If those structures fail at any time to comply with applicable laws and regulations, the provider or applicant, at its expense, shall cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them from the City Manager of non-compliance, or cease all personal wireless service operations related to those structures until the provider or applicant comes into full compliance with said laws and regulations.

(iv) The facilities and associated structures must at all times be maintained in good and safe condition. On no more frequent than a triennial basis, the City Manager may request that the provider or applicant, at their expense, furnish certification from a professional engineer who is licensed in the state of Alabama that the facilities and structures are in sound condition. Should that engineer deem those structures unsound, the provider or applicant shall furnish the City Manager a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the provider's/applicant's expense.

(v) Each provider or applicant that applies for a permit to place facilities (including the accessory equipment) and support structures on the public right of way and installs and utilizes those structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: (1) the installation, construction, maintenance, use or operation of the permitted facilities, accessory equipment or any support structures on or about the public right of way; and (2) the failure of the provider or the applicant to perform any of their responsibilities, obligations and permit requirements in this ordinance.

(e) **Permit and License Fees.** The provider or applicant for a permit to place facilities and associated structures on the public right of way shall pay the following types of fees that are enumerated in Chapter 14 of the City Code of Ordinances, as amended:

(i) a permit application and review fee to be paid when an application is submitted;

(ii) an initial permit issuance fee per each support structure on public right of way; and

(iii) an annual license fee per each support structure on the public right of way pertaining to the ongoing use of public property.

(f) Franchise Agreements for Other Uses of Right of Way. This Section 2 regulates the placement of Small Cell Technology facilities (and associated accessory equipment) on or in the immediate vicinity of support structures that are located or proposed to be located on the public right of way. No provision in this Section 2 or elsewhere in this ordinance is intended to permit, regulate or authorize the placement by a personal wireless service provider or a certificated carrier of telecommunication services of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals, data or messages between support structures or between any other points on the public right of way. In the event any such provider or carrier desires to place telecommunications equipment or facilities along the public right of way at points not regulated by this ordinance, the City may enter into franchise or similar agreements that authorize, govern and apply to such use of other locations on or along the public right of way.

Section 3: Placement of Small Cell Technology Facilities on Private Property:

(a) A personal wireless service provider or applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology facility (and associated accessory equipment) on any support structure that is located on private property, or substantially modifying the position or characteristics of any such existing facility thereon.

(b) The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manager's reasonable discretion, it should be issued for the location and in the manner requested. In this process, the burden is on the personal wireless service provider or applicant to demonstrate that the placement of the proposed Small Cell Technology facility and associated accessory equipment or support structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of personal wireless services. Except as set forth in this section, this permitting process will not require the approval of any City Board or City official other than the City Manager.

The factors, guidelines and requirements that the City Manager may consider and will apply when determining whether to issue a permit for placement of facilities and any associated accessory equipment or support structure on private property include, but are not limited to, the following:

(i) the factors and requirements set forth in Section 2(b)(i)-(xi);

(ii) Colocation. The guidelines in Section 2(b) (vii) to utilize existing poles and support structures for the placement of facilities and accessory equipment are also applicable when considering whether to permit the installation of those facilities and structures on private property, provided that City Council approval is not required before a permit is issued to place a new utility pole or other support structure on private property if that action is appropriate.

(iii) The personal wireless service provider or applicant shall use Stealth Technology installing the facilities and associated accessory equipment on any building or accessory structure that is located on private property. Further, Stealth Technology should be used when placing facilities on other types of support structures on private property unless the provider or applicant can reasonably demonstrate that, given the nature of the requested application, the use of such Technology is (a) unnecessary; or (b) impractical.

(iv) If facilities are placed on an existing or new building or accessory structure thereto, the following dimensional regulations shall apply:

1. Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the support structure.
2. Roof-mounted antennas and accessory equipment may be permitted on buildings in a accordance with the following table:

Height of Building	Maximum Height of Facility above Highest Point of Roof	Required Setback from Edge of Roof of Building
Up to 15 feet	8 feet, including antenna	1 foot for every foot of height of equipment
15-35 feet	10 feet, including antenna	1 foot for every foot of height of equipment
More than 35 feet	12 feet, including antenna	1 foot for every foot of height of equipment

3. The antenna component of the facilities shall be limited to a maximum height of 3 feet and a maximum width of 2 feet.
4. Accessory equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding, it shall conform to Section 129-314 of the Mountain Brook Municipal Code with respect to building setbacks, that building shall not exceed 400 square feet, and its overall height shall be limited to 15 feet (if located on the ground) measured from the finished grade. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.

(v) Application Process. Except as provided in subparts (1) and (2) immediately below, the same application process that is set forth in Section 2(c) will be utilized when processing any request for a permit to place facilities or support structures on private property.

- (1) City Council approval to install a new support structure on private property is not a condition for a permit to place facilities on private property; and

(2) If the facilities are located on private property that is not owned or exclusively used by the applicant, instead of providing the documentation contemplated in Section 2(c) (4), the provider or applicant shall present a license, lease, agreement or other documentation indicating that owner of said property has granted the applicant the right to place the facilities thereon and access to those facilities.

(vi) Additional Requirements. Any personal wireless service provider or applicant to whom a permit is issued and that places facilities and associated structures on private property also shall comply with the following requirements as long as those facilities and support structures are located on private property:

(1) All facilities and support structures shall be installed, erected, and maintained in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.

(ii) At least triennially following the installation of the facilities or associated structures, the provider or applicant shall furnish the City Manager a written certification from a professional engineer licensed in the State of Alabama indicating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. If those structures fail at any time to comply with said laws and regulations, the provider or applicant shall cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them of such non-compliance, and cease all personal wireless communications operations related to those structures until the provider or applicant comes into full compliance with applicable laws and regulations.

(iii) The facilities and associated structures on private property must at all times be maintained in good and safe condition.

(c) Permit and License Fees. The provider or applicant for a permit to place facilities and associated structures on private property shall pay the following types of fees that are enumerated in Chapter 14 of the City Code of Ordinances, as amended:

(i) a permit application and review fee to be paid when an application is submitted;

(ii) an initial permit issuance fee per each support structure on public right of way; and

(iii) an annual license reissuance fee per each support structure on the public right of way pertaining to the ongoing use of public property.

Section 4: Abandonment of Facilities.

If a personal wireless service provider or applicant abandons any facility (including the accessory equipment) or an associated support structure (collectively “facilities” for purposes of this Section), the provider or applicant shall have the following obligations:

(a) Within sixty (60) days after receiving written notice from the City Manager, or any such shorter time that may be prescribed by applicable law or regulation, the provider or applicant, at their expense, must remove any abandoned facilities that were owned, maintained, operated or used by them prior to the abandonment, and reasonably restore the condition of the property at which the facilities are located to that existing before they were installed. If the abandoned facilities are located on a support structure that is not owned by or not exclusively used by the provider or applicant, the provider/applicant shall remove only part of the facilities that was placed, operated or used by or within their control prior to the abandonment;

(b) If the provider or applicant fails to perform its responsibilities set forth in subpart (a), the owner, lessee or person or entity in control of the real property (the “owner” for purposes of this subsection) on which the facilities were placed may remove the abandoned facility(ies) that were exclusively used by or in the control of the provider or applicant at that location before the abandonment, and salvage or otherwise dispose of those facilities in any manner that the owner deems appropriate. If the City removes any abandoned facilities from real property that it owns, it shall have the right to purchase from the provider or applicant all abandoned facilities removed from that location in consideration for \$10.00, and resell those facilities to a third party. Further, the provider or applicant shall within thirty (30) days after written demand from the owner, reimburse it for all expenses incurred by it to remove, dispose or salvage any abandoned facilities; provided that the proceeds of any resale of abandoned facilities by the City to a third party shall be credited to the account of the provider or applicant that used those facilities before the abandonment.

Section 5: To promote the public interest that is served by co-locating facilities and associated accessory equipment on existing support structures and thereby mitigating the installation of unneeded support structures throughout the City, no person or entity (including any personal wireless service provider, applicant, utility, or franchisee) that utilizes an existing support structure that is located on public right of way or on private property and has space available thereon may deny a personal wireless service provider or applicant the right to use or access to an existing support structure for purposes of attaching facilities permitted by this ordinance without sound operational, technological or other good reason.

Section 6. Non-Applicability. The placement of antenna or facilities related to the following types of wireless communication services are exempt from regulation hereunder: (a) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and (b) facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this Chapter are supplemental to, and not intended to alter, affect or modify the provisions in Chapter 125 pertaining to the placement or use of macro Telecommunications Towers.

Section 7. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 8. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 9. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.'

ADOPTED: The ____ day of _____, 2015.

Council President

APPROVED: The ____ day of _____, 2015.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on _____, 2015, as same appears in the minutes of record of said meeting, and published by posting copies thereof on _____, 2015, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
The Invitation Place, 3150 Overton Road

City Clerk

ATTACHMENT A

PHOTOGRAPHS AND ILLUSTRATIONS DEPICTING TYPES, RELATIVE DIMENSIONS AND NATURE OF SMALL CELL TECHNOLOGY FACILITIES AND ASSOCIATED STRUCTURES REGULATED BY THIS ORDINANCE

The referenced photographs and illustrations are attached to the permanent record of this Ordinance that is maintained in the office of the City Clerk and available upon request to that office.

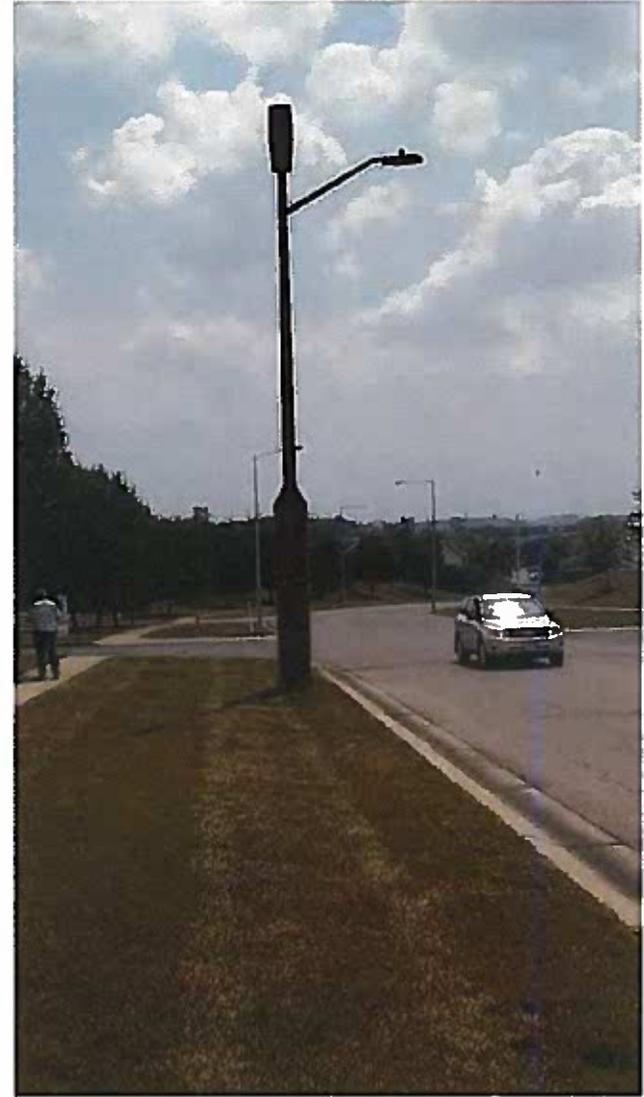


Small Cell Solutions





Small Cell Solutions





Small Cell Antenna



840 10515 840 10516

Dualband 700 MHz X-pol Tri-sector Antenna
698–894 MHz
1710–2170 MHz

Kathrein's dual band antennas are ready for 3G and 4G applications, covering all existing wireless bands as well as all spectrum under consideration for future systems.

- Wide band operation.
- Exceptional intermodulation characteristics.
- High strength fiberglass radome.
- Each antenna section is independently accessible.

General specifications:

Frequency range	698–894 MHz 1710–2170 MHz
VSWR	<1.5:1
Impedance	50 ohms
Intermodulation (2x20w)	IM3 <-150 dBc
Polarization	+45° upper and lower band -45° upper and lower band
Connector	12 x 7-16 DIN female
Isolation intrasystem	>30 dB
Isolation intersystem	>40 dB (698–894 // 1710–2170 MHz)
Radome color	Brown or gray
Weight	50 lb (22.7 kg)
Height	24 inches (609 mm)
Radome diameter	18 inches (467 mm)
Wind load Side	at 93 mph (150kph) 22 lbf (138 N)
Wind survival rating*	100 mph (160 kph)
Shipping dimensions	32 x 20 x 19 inches (813 x 508 x 483 mm)
Shipping weight	52 lb (23.6 kg)
Mounting	Designed to be mounted on top of a utility pole using a custom mounting bracket supplied by the customer.

See reverse for order information.



Specifications:	698–894 MHz	896–894 MHz	1710–1880 MHz	1880–1980 MHz	1920–2170 MHz
Gain	10.4 dBi	11.8 dBi	13.5 dBi	13.5 dBi	13.2 dBi
Front-to-back ratio (180° ± 30°)	>24 dB (co-pol) >18 dB (total power)	>26 dB (co-pol) >20 dB (total power)	>22 dB (co-pol) >24 dB (total power)	>30 dB (co-pol) >26 dB (total power)	>30 dB (co-pol) >25 dB (total power)
Maximum input power	250 watts (at 50°C)	250 watts (at 50°C)	200 watts (at 50°C)	200 watts (at 50°C)	200 watts (at 50°C)
+45° and -45° polarization horizontal beamwidth	71° (half-power)	66° (half-power)	60° (half-power)	60° (half-power)	68° (half-power)
+45° and -45° polarization vertical beamwidth	37° (half-power)	31° (half-power)	19° (half-power)	17.5° (half-power)	17.5° (half-power)
Cross polar ratio	0°	18 dB	20 dB	22 dB	25 dB
Main direction Sector (typical)	±60°	±8 dB	±8 dB	±8 dB	±8 dB

ATTACHMENT B

PHOTOGRAPHS AND ILLUSTRATIONS DEPICTING EXAMPLES OF STEALTH TECHNOLOGY FOR SMALL CELL TECHNOLOGY FACILITIES LOCATED ON BUILDINGS AND OTHER STRUCTURES

The referenced photographs and illustrations are attached to the permanent record of this Ordinance that is maintained in the office of the City Clerk and available upon request to that office.

Adhesive-backed Films Offer Camouflage for Small Cells

By Steve King

Lookaround. Chances are you're probably surrounded by people looking down at their smartphones or tablets. They're doing everything from working to watching video or playing games — or just updating their Facebook status. (Are you reading this article on a mobile device?)

To accommodate all this bandwidth, small cells will soon be popping up everywhere. Small cells fit just about anywhere because of their small size. However, they are typically placed less than 30 feet high, so it's harder to keep them out of sight.

If network densification is the key factor in the wireless evolution, how can we keep small cell infrastructure

from becoming an eyesore everywhere from St. Louis to Shanghai?

To make small cell equipment more aesthetically pleasing, a smarter approach to concealment and camouflage is necessary.

Because small cells come in various shapes, the right solution needs to be pliable. It also needs to be tough and weather resistant because small cells are frequently placed outdoors.

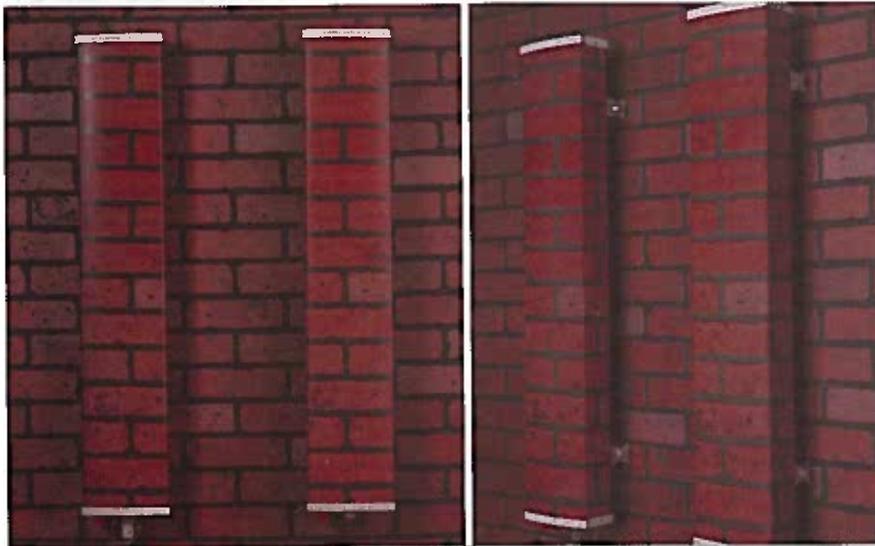
Some mobile service providers are finding success by simply wrapping small cells with the same materials used to wrap cars or buses. Companies such as 3M make adhesive-backed films that are UV resistant, durable for years, and easy to apply. What's more, they can be

printed on. So if a mobile service provider wants to place a small cell next to a brick wall, they can simply take a high-definition photo of the wall and have it printed on the film. Experienced installers can then apply the film to the cell.

The result can be a camouflaged match, and sometimes it can be so effective that it may only be seen if you know where to look. (Everyone is more interested in his or her smartphone screens anyway.) With solutions such as printable films, hiding in plain sight may be the solution mobile carriers need for aesthetically pleasing network densification.

Steve King is an applications engineer with the 3M Communications Markets Division.

CAMOUFLAGE



A small cell next to a brick wall can practically disappear with printable, adhesive-backed films from 3M.



Wireless components can hide in plain sight with the same materials used to wrap cars and buses.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND CHAPTER 14 OF THE
MOUNTAIN BROOK MUNICIPAL CODE**

WHEREAS, in Ordinance No. _____ the City Council of the City of Mountain Brook, Alabama ("City Council") has enacted new regulations that apply to placement of Small Cell Technology Facilities ("Facilities", as defined in Ordinance No. _____ and used herein) along public right of ways and on private properties within the City;

WHEREAS, the regulations in Ordinance No. ____ will be codified in a new Chapter 126 of the Mountain Brook Municipal Code; and

WHEREAS, Sections 2(e) and 3(c) of Ordinance No. _____ provide that certain fees be paid by personal wireless service providers or applicants in connection with the review of applications, initial issuance and annual reissuance of permits required to construct, place, maintain and operate Facilities in the City;

WHEREAS, the City Council herein amends Chapter 14 of the Mountain Brook Municipal Code to set forth the level of fees contemplated in Sections 2(e) and 3(c) of Ordinance No. _____ .

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

Section 1.

Chapter 14 of the Mountain Brook Municipal Code is amended to add the following:

CHAPTER 126
SMALL CELL TECHNOLOGY FACILITIES

Section of Code	Description	Fee (in dollars)
26-_____	Permits to Place & Operate Facilities on Public Right of Way	
	Permit Application & Review Fee (Ord. No. ____ § 2(e)(i), _____, __, 2015)	200.00
	Initial Permit Issuance Fee per Support Structure (Ord. No. ____ § 2(e)(ii), _____, __, 2015)	100.00
	Annual License Fee per Support Structure (Ord. No. ____ § 2(e)(iii), _____, __, 2015)	500.00

26-_____	Permits to Place & Operate Facilities on Private Property	
	Permit Application & Review Fee (Ord. No. ____ § 3(c)(i), _____, __, 2015)	200.00
	Initial Permit Issuance Fee per Support Structure (Ord. No. ____ § 3(c)(ii), _____, __, 2015)	100.00

Section 2. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 3. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 4. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.'

ADOPTED: The ____ day of _____, 2015.

Council President

APPROVED: The ____ day of _____, 2015.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on _____, 2015, as same appears in the minutes of record of said meeting, and published by posting copies thereof on _____, 2015, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
The Invitation Place, 3150 Overton Road

City Clerk

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the "Agreement") is made by and between Crown Castle NG East LLC, a Delaware limited liability company (formerly known as Crown Castle NG East Inc., a Delaware corporation) (hereinafter referred to as the "Company"), and the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation (the "City") as of the Effective Date (as defined below). The Company and the City separately may be referenced herein as a "Party," and collectively as "Parties."

RECITALS

WHEREAS, in December 2013 the Alabama Public Service Commission awarded the Company's predecessor Crown Castle NG East Inc. a certificate to provide competitive local exchange telecommunications services in this State;

WHEREAS, the Company intends to provide telecommunications service utilizing one or more of the protocol-agnostic, fiber-based optical networks and Small Cell Technology Facilities and Equipment that may be owned by the Company or third parties to serve its customers and personal wireless service providers who serve the City;

WHEREAS, pursuant to Ordinance No. _____, the City regulates the placement of antenna and associated accessory equipment that is installed in connection with a Small Cell Network on or about support structures located on the public right of way and on private properties throughout the City;

WHEREAS, the Company's selection of locations to install its equipment and serve its customers, and its construction and operation of equipment used in its Small Cell Network along the public right of way are subject to the advance approval of the City, the exercise of its police powers, and the Company must comply with all laws, codes and regulations, including, but not limited to the Ordinance No. _____;

WHEREAS, the Company will not use the Small Cell Network or its Equipment to provide cable television services, channels, or programming to end users in the City; and

WHEREAS, in accordance with the terms and conditions herein and subject to the Company's compliance with the Ordinance, the City grants the Company a non-exclusive franchise for it to construct, maintain and operate its Small Cell Network and place its equipment in along the Rights of Way and in the manner approved in advance by the City.

NOW, THEREFORE, in consideration of the Recitals above, the respective representations, promises, concessions, terms and conditions contained herein, the receipt and sufficiency of which is acknowledged, the Parties agree as follows.

1. Definitions. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

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a. "City" means the City of Mountain Brook, Alabama.

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b. "Company" means Crown Castle NG East LLC, or any entity that succeeds Crown Castle NG East LLC in accordance with the provisions of this Agreement.

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c. "Customer" means any person to whom the Company provides any Telecommunication services to or from, or between locations in the City, or any personal wireless service provider or other customer to whom it provides or allows the use of Equipment.

d. "Effective Date" shall mean the first day of the month after the date last executed by a Party below on the Signature Page.

Deleted: "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard-design or conventional steel, concrete, or aluminum streetlight poles ¶
e.

e. "Equipment" means the optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, remote radio heads, antennas, fiber optic and coaxial cables, wires, meters, pedestals, poles, and other support structures, power switches, nodes, hubs and related equipment, whether referred to singly or collectively, to be installed, used or operated by the Company hereunder to operate its System or provide Services.

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f. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or other right to construct, operate and maintain the System in and along the ROW at locations requested by the Company in which its intended operations are approved in advance by the City and performed in compliance with applicable laws, codes or regulations, including but not limited to, land use and zoning regulations and the Ordinance.

g. "Franchise Fee" means the fee paid by the Company to the City for the privilege of locating, maintaining and operating its System and placing its Equipment as various locations in the ROW.

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h. "Gross Revenues" shall mean all revenues, in whatever form, that are received or accrued by the Company from any person, carrier, customer, personal wireless service provider or entity that is not affiliated with it with respect to the receipt, transmission, or distribution of any data, voice, video or other electronic messages or signals in whatever form to or from locations in the City (or between locations in it), all revenues received by the Company in connection with its provision of Equipment to personal wireless service providers or its other customers, and all revenues paid to it for Services that arise from its operations in the City. This term shall include, but not be limited to, the following:

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i. All recurring or non-recurring revenues received with respect to the provision of any Service that utilizes the System;

ii. All recurring or non-recurring contract fees, usage based fees, charges, or consideration of any kind or nature (including without limitation, cash, credits, property, and in-kind contributions) received by the Company in connection with its utilization of the System or provision of its facilities or Equipment in the City;

iii. All ~~recurring and non-recurring~~ revenue arising from or attributable to the provision of any ~~Equipment~~ that is ~~constructed, leased, sold~~ by the Company ~~or provided to any~~ to its customers ~~or to personal wireless service providers~~ in connection with the provision of ~~Services or operation of the System.~~

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Gross Revenues do not include the following:

i. uncollectible fees; provided that all or part of uncollectible fees that are written off as bad debt, but subsequently collected, less expenses of collection, shall be included in Gross Revenues in the period collected;

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ii. insufficient funds (returned checks);

iii. late payment fees;

iv. discounts, ~~promotions, refunds, rebates,~~ and other price adjustments that reduce the amount of compensation received by Company from its customers;

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v. the amounts billed by the Company to its Customers to recover ~~sales, ad valorem, or other types of "add on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid or collected for federal, state, or local government,~~ or surcharges imposed on them in connection with the provision of services, including the Franchise Fee and any other tax, fee or charge of general applicability collected by Company from its customers for pass through to the City or any other governmental entity or agency;

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vi. ~~non-operating revenues such as interest income or gain from the sale of an asset; or~~

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vii. ~~permit or license fees paid by the Company on behalf of a personal wireless service provider or other customer pursuant to Section 2(e) of the Ordinance for which that provider or customer reimburses the Company.~~

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~~i. "Municipal Facilities" means any City-owned Streetlight Poles, Traffic Signal Poles, or other City-owned poles or structures located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used.~~

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<#>ij. "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City ¶~~

~~ii. "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.~~

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l. "ROW" or "Rights-of-Way" means the surface and space above and below any the public rights of way, streets, avenues, highways, roads and dedicated municipal easements within the City's corporate boundaries.

l. "Service" or "Services" shall mean all services provided by the Company for which it receives compensation from its customers or personal wireless service providers with respect to its operations in the City, including Telecommunications services provided by the Company and compensation received by the Company by it providing or allowing the use of its Equipment by personal wireless service providers, carriers or its other customers to enable them to serve the public.

m. "Small Cell Network" or "System" means one or more of the protocol-agnostic, fiber-based optical networks which may incorporate Small Cell Technology Facilities and Equipment that may be owned, leased, or controlled by the Company or third parties and is provided by the Company to personal wireless service providers or its other customers.

n. "Small Cell Technology Facilities" shall have the meaning ascribed to it in the Small Cell Technology Facilities Ordinance.

o. "Small Cell Technology Facilities Ordinance" or "Ordinance" means Ordinance No. _____ enacted by the City Council of Mountain Brook on or about _____, 2015.

p. "Streetlight Pole" shall mean any standard-design or conventional concrete, fiberglass, metal, or wooden pole used primarily for street lighting purposes, and includes poles owned by the City.

q. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice or other signal), without change in the form or content of the information as sent and received.

r. "Traffic Signal Pole or Signal" shall mean any pole or signal used primarily to support vehicular or pedestrian traffic signalization, and includes such poles and signals owned by the City.

2. Grant of Authority.

(a) Access to ROW. Pursuant to the terms, conditions and understandings herein and provided the Company complies with the requirements in the Ordinance, the City hereby grants to the Company a non-exclusive Franchise to construct, maintain and operate its Small Cell Network and associated Equipment on or along the ROW in the City.

(b) Attachment to Municipal Facilities. Provided the Company complies with the permitting requirements in the Ordinance, the City hereby authorizes the Company to enter upon the ROW and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Small Cell Network and providing Services. In addition, the Company shall have

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Deleted: "Small Cell Network" means one or more of the protocol-agnostic, fiber-based optical networks which , which may incorporate small cell technology facilities and Equipment that may be owned, leased, or controlled by the Company or third parties third party Equipment, operated exclusively by the Company to serve its customers in the Cityand is provided by the Company to personal wireless service providers or its other customers.

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Deleted: "Service" or "Services" shall mean all services provided by the Company for which it receives compensation from its customers or personal wireless service providers with respect to its operations in the City, including Telecommunications services provided by the Company for which it receives compensation from its customersand compensation received by the Company by it providing or allowing the use of its Equipment by personal wireless service providers, carriers or its other customers to enable them to provide their services to the public ¶

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~~the right to draw electricity for the operation of its Equipment from the power source, if any, that is associated with each such attachment to Municipal Facilities.~~

~~(c) Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property and provided the Company complies with the Ordinance, the City hereby authorizes and permits the Company to enter upon the ROW and to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures located within the ROW owned by public utility companies or other property owners as may be permitted by the public utility company or property owner, as the case may be. Where third-party property is not available for attachment of Equipment, the Company may request to install its own poles in the ROW and such request will be considered by the City in the manner set forth in the Ordinance.~~

3. Limitations on Access to ROW.

The Company agrees and acknowledges the following limitations, conditions and understandings apply with respect to the grant of its Franchise:

~~(a) The request of the Company to utilize particular locations along the ROW in the City shall be subject to the reasonable prior written review and approval of the City, and subject to the Company's compliance with the Ordinance. Except as provided in the Ordinance, the approval process for the placement of all facilities and Equipment in the ROW will be consistent with that used for similarly situated franchisees of the City;~~

~~(b) The nature, manner and mode of installing or maintaining any line, cable, Equipment or apparatus comprising the Small Cell Network must be approved in advance by the City, and such approval is subject to Company's compliance with the Ordinance. The intent of the Parties is to comply all applicable federal, state and local laws and regulations pertinent to this approval process, including any such regulations imposed by the FCC and the Ordinance;~~

~~(c) The nature and type of the Company's intended operations along the ROW must comply with applicable laws, codes or regulations;~~

~~(d) The Company shall not install, expand or extend the Small Cell Network without first submitting maps or plats showing the locations and types of Equipment intended to be installed at all locations, obtaining appropriate permits from the City, and complying with any conditions related to the use of such permits, including burying any underground facilities at depths below the grades of any streets as may be required by the City;~~

~~(e) The grant is not exclusive. The City reserves the right to grant the use of the ROW to any other person at any time and for any lawful purpose;~~

~~(f) This Agreement shall not be construed to create any rights beyond its express terms, conditions and periods;~~

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- Deleted: except that it is agreed that no zoning or planning board permit, variance, conditional use permit, or site plan permit, or their equivalent under the City's ordinances, codes, or laws, shall be required for the installation of the Company's Equipment installed in the City's ROW, unless such a
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(h) In approving any intended Company operations along particular points of the ROW, the City does not represent or warrant to the Company that the City holds title, right or interest in or to the ROW at those points, or that it has the right or authority to grant the Company the right to conduct its intended operations thereon. The Company acknowledges and agrees that it has the burden and responsibility to assess and determine its right to operate in the requested locations in advance of the installation of its Small Cell Network. Further, the City does not make any warranty (express or implied) to the Company concerning the sufficiency, condition or appropriateness of the ROW for the uses intended by the Company;

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(i) The Company acknowledges that utilities or other persons or entities may hold or claim rights to utilize the same sections of the ROW in which the Company intends to operate, and that the Company exclusively is responsible for designing, planning, coordinating, installing its Small Cell Network and conducting its operations in a manner that does not unduly interfere with the operations of those other entities;

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(j) This Agreement shall not be construed to deprive the City of any rights, regulatory or police powers or other privileges under State law which it now has, or may hereafter have, to regulate the use and control of its ROW or provide for the safety and welfare of the public. By granting this Franchise and approving this Agreement, the City does not surrender or to any extent waive, impair or relinquish any of those regulatory powers and rights, or to charge reasonable compensation for such use. By entering this Agreement, the Company agrees and acknowledges that all such rights, police or other regulatory powers shall be in full force and effect during its term, that the Franchise granted it hereunder is subject to the exercise by the City of those police powers, and that it will comply with all such existing, applicable laws and ordinances that exist today or hereinafter may be enacted. In the event of any conflict between the provisions of this Agreement and any present or future laws, regulations or ordinances by which the City exercises its police powers, the provisions of those laws, regulations and ordinances shall control and take precedence in resolving the conflict;

(k) The grant of the Franchise herein shall not be construed to convey, bestow, or transfer to Company any title, easement or other permanent property interest in the ROW or other public property in or on which it conducts operations;

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(l) This Agreement does not establish any priority for the use of the ROW by the Company, or any present or future franchisees, permit holders or other users of the ROW. In the event of any dispute as to the priority of use of the ROW, the first priority shall be to the public generally, the second priority shall lie with the City, the third priority with the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its police and other powers conferred on it by the State of Alabama;

(m) Nothing in this Section or elsewhere in the Agreement shall be construed to limit the Company's rights to access and use its own or general utility easements in

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accordance with the terms of such easements so long as such use is consistent with applicable law ~~and regulations, including, but not limited to, the Ordinance; and~~

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(n) This Agreement does not confer upon the Company any right to use conduit that is now owned by the City or may hereafter be acquired.

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4. Operating Requirements and Standards.

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The following understandings apply with respect to the Company's use of the Franchise and its operations within the City:

(a) At all times the Company shall keep and maintain the Small Cell Network and Equipment in a safe, suitable, and substantial condition, and in good order and repair.

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(b) The Company shall provide safe passageway for vehicles and pedestrians through, in and around its work sites. It further shall comply with all rules of the road or other laws related to operation of vehicles along the ROW. Except in the case of an emergency or with the approval of the City Engineer (or other designated City official), the Company agrees not to conduct its operations in a manner that interferes with usual vehicular or pedestrian travel on or the maintenance of the ROW, nor shall the placement of its facilities or its operations unreasonably limit the visibility of vehicular and/or pedestrian traffic on or along them.

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(c) The Company shall conduct its operations in a manner that does not unreasonably interfere with the rights and reasonable convenience of persons who own property adjoining the ROW. The Company acknowledges that it may enter private property only as permitted by applicable law, or as allowed by the owner of such private property, for the purpose of performing its operations thereon.

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(d) The Company shall construct the Small Cell Network and perform its operations in accordance with all applicable federal, state and local laws, ordinances, codes, and regulations pertaining thereto, including, but not limited to, the following: any building code, electric code or ordinances that are now in effect or may hereafter be adopted by the City; laws and regulations that protect workers and are intended to promote safety in the workplace; laws and regulations and that protect the environment, air or water quality or the public health, safety and welfare (including, without limitation, those issued by the Alabama Department of Environmental Management and Environmental Protection Agency); and regulations of the Federal Communications Commission.

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Comment [A1]: Covered in Section 3(d) above.

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(e) The work to be done under this Agreement, and the restoration of the ROW as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer, or other City official.

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(f) The Company shall repair and replace sections of the ROW that are disturbed due to the installation, removal, relocation, maintenance and repair of its Small Cell Network,

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and restore those sections to a condition comparable to the condition existing immediately prior to such disturbance to the satisfaction of the City.

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(g) Whenever reasonably practical, the Company agrees to place its facilities and Equipment on, within or adjacent to the facilities and easements of utilities and other franchisees or other areas used by them.

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(h) When the Company constructs or configures its Small Cell Network, it agrees to install its facilities underground in those parts of the City where existing telephone and electric services are both underground. In areas where either telephone or electric utility facilities are installed aerially at the time of construction of the Small Cell Network, the Company may install its facilities aerially with the understanding that, at such time as the existing aerial facilities are required to be placed underground by the City, the Company shall likewise place its facilities underground. If a site requested by the Company for the location of facilities or Equipment raises concerns about public health, safety, and welfare, the City and Company agree to work together to identify alternative locations, if available, that satisfy any technical specifications or limitations of those facilities or Equipment and those concerns.

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(i) Least Disruptive Technology. The Company agrees to construct and maintain its Small Cell Network in a manner resulting in the least amount of damage and disruption to the ROW. To that end, the Company will use directional boring in all areas where no conduit exists. Further, the Company will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City. The City Engineer (or other appropriate official) may require trenchless technology in other locations where circumstances prevent or make open-cut methods impractical. Any requests by the Company to utilize the open-cut or trench method for construction or maintenance must be approved by the City Engineer (or other City official).

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(j) The Company shall have the right to remove, trim, cut and keep trees and shrubbery clear of the Small Cell Network at points in and along the public ways; provided that Company shall perform those operations only having first consulting with the City's arborist (or other official who is designated to act in that capacity), and shall comply with any local rules, codes and regulations that pertain to that work. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the Small Cell Network undertaken by the Company to the satisfaction of the City.

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(k) The Company shall bear all costs associated with the installation, repair and maintenance of its Small Cell Network and its Equipment including, but not limited to (1) all expense to repair and restore the ROW that is disturbed due to those operations,

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and (2) all expense incurred in removing or relocating any portion of the Small Cell Network or facilities constructed when required by this Agreement.

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(l) The Company, at its expense, agrees to promptly repair or replace any facility, Equipment or public improvement that Company damages or disturbs in the course of exercising its rights hereunder, including but not limited to, any road, street or other section of the ROW, and any electric facility, sewer, water main, fire alarm, police communication or traffic control facility.

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(m) In conducting its operations, the Company further agrees to:

(1) comply with all applicable sections of the National Electric Safety Code;

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(2) utilize reasonable, commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public or damages to property owned by third persons;

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(3) install and maintain the Small Cell Network in such manner that its operations will not interfere with any improvements of the City or of a public utility serving the City.

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(4) perform its operations in accordance with good engineering practices and standards for firms providing like operations in the Company's industry, and in an orderly and workmanlike manner;

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(5) perform all its operations through qualified maintenance and construction personnel. Further, the Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service and maintenance of the Small Cell Network; and

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(6) not perform its operations in a manner that obstructs the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

(n) Relocation or Removal of Small Cell Network at Request of the City. The City reserves the right to determine that, in its reasonable discretion, it is in the public interest to improve or modify its ROW in a manner that requires the displacement, modification, relocation or removal of the Small Cell Network from any area along the ROW. In any such case, the City shall use its reasonable efforts to afford the Company a reasonably equivalent alternate location. Upon its receipt of reasonable notice from the City of that determination (which notice shall be not to be less than forty-five (45) days except where emergency conditions require shorter notice), the Company, at its own expense, shall protect, support, temporarily disconnect, relocate to another section of the ROW designated by the City, or totally remove from the ROW any property, Equipment or facilities of the Company when required or requested by the City, Jefferson County or the State of Alabama for reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street

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grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines when such relocation work is being done directly by or for the City, Jefferson County or the State. Should the Company refuse or fail to relocate or remove its **Equipment** and facilities as provided for herein within forty-five (45) days after written notification, the City, Jefferson County or State shall have the right to do such work (or cause it to be done) and the reasonable cost thereof shall be chargeable to the Company.

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5. Effective Date/Term/Renewal.

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This Agreement will become effective on the Effective Date, and thereafter continue in effect for a term of Ten (10) years (the "Initial Term"). Following the expiration of this Initial Term, this Agreement and the Franchise granted herein may be renewed and extended upon mutual agreement of the Parties for an additional term of Ten (10) years upon application to the City if (i) the Agreement previously has not been terminated or the Franchise revoked as provided hereunder, (ii) the Company has faithfully performed its obligations hereunder, and (iii) the application and extension complies with applicable federal, state or local law,

6. Franchise Fee/Records Retention/Audit

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a. Franchise Fee. During the term of this Agreement, the Company shall pay the City a fee of five percent (5%) of the Gross Revenues (the "Franchise Fee"). Company shall make these payments within fifteen (15) days after the end of the preceding quarter of each year of the term of this Agreement. At the time of each such payment, the Company also will furnish City with a report or statement that, in a summary form, discloses the total Gross Revenues derived from the **Small Cell Network** for the previous quarter, the methodology used by Company to calculate the Franchise Fee and other bases upon which Company determined the amount of each payment. The Parties agree that, if the Company pays the annual license fees that are contemplated in Section 2(c)(iii) of the Ordinance and it is not reimbursed by personal wireless service providers or its other customers for those payments (the "Unreimbursed License Fee Payment(s)"), the Franchise Fee payable to the City during a given quarterly period may be reduced by the total amount of the Unreimbursed License Fee Payments paid by the Company during that period; provided that if the Company is subsequently reimbursed by a provider or customer for said annual license fees paid by the Company that previously have been credited as an Unreimbursed License Fee Payment during a prior quarterly payment period, the Company will remit those reimbursed amounts to the City at the time of its next quarterly Franchise Fee payment.

Deleted: a Annual Municipal Facility Fee. In order to compensate the City for the Company's use of Municipal Facilities, the Company shall pay to the City an annual fee (the "Annual Fee") in the amount of _____ Dollars (\$____.00) for the use of each Municipal Facility, if any, upon which Equipment has been installed pursuant to this Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installations on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Effective Date. For the purpose of calculating the Annual Fee remittance, all Equipment attached by the Company to one Municipal Facility shall constitute one installation and therefore a single use of a Municipal Facility. ¶

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b. Records Retention. For a rolling period not less than five (5) years following the creation of the following records, the Company agrees to retain and make the same available for inspection by the City (or its designated representative):

- i. its databases and books, reports, statements or accounting records indicating the types of services provided to Customers during the term of the Agreement;

ii. its databases and books, reports, statements and accounting records indicating the revenues charged and collected for the services provided to Customers during the Agreement; and

iii. all records, reports or other data generated, used or reviewed by the Company to compute its Gross Revenues or in the process of calculating the amounts of Franchise Fees paid to the City.

6. Audit of Records. The Company acknowledges and agrees that, to the extent necessary to ensure proper payment of Franchise Fees or any other amounts owed City hereunder, the City (or its designated representative), upon the provision of reasonable advance notice to the Company, shall have the right during the Term of the Agreement or within one year following its expiration or termination to audit, examine, review and receive copies of the records listed above in subpart (b). At its expense, the Company agrees to furnish access to these records and reasonably cooperate with City in any such audit or review.

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7. The City's acceptance of quarterly Franchise Fee payments shall not be construed as a waiver, release, accord or satisfaction of any claim that the City might have related to the Company's obligation for those payments, or be construed as an agreement that the amount of any such payment is correct.

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8. The City acknowledges that, on the Company's bills to its Customers, the Company separately may identify and subsequently pass through the Franchise Fee and other government-imposed taxes, taxes, fees, or surcharges payable and collected from them in connection with the its provision of services.

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9. Other Reports. In addition to other records contemplated in this Section, the Company agrees to furnish the City an annual financial statement on or before April 1st of each year, or at any time upon request of the City after thirty (30) days written notice. Such statement shall show Gross Receipts received by the Company from its operations within the City for the previous year. Moreover, upon request by the City and after sixty (60) days written notice, the Company shall furnish the City an annual certified audit report showing Gross Receipts received by the Company from its operations within the City for the previous year.

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<#>When requested by the City, the Company agrees to furnish and maintain, at no cost to the City, two (2) fiber strands along the entire backbone of the SystemSmall Cell Network (whether installed aerially or underground) that the City may use for non-commercial purposes (the "Public Service Pathway"). The Public Service Pathway shall be installed by the Company in a manner that will permit unrestricted uses by the City which include, but are not limited to, the transmission of point-to-point communications between municipal, schools and other publicly-owned buildings in the City, provided that the City shall be responsible for any damages resulting from its use of the Public Service Pathway that are caused by the willful or wanton acts of the City, its employees or any other person acting under its direction or control. [INTENTIONALLY OMITTED.]
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7. Service to Customers.

During the term of this Agreement, the Company will comply with all regulations of the Alabama Public Service Commission or any other applicable regulatory agency that relate to service standards for its Customers.

8. Insurance/Indemnification/Performance Bond.

a. Insurance Requirements. For the duration of this Agreement and for limits not less than stated below, the Company shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

Workers' Compensation

As Required by Statute

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Commercial General Liability

(a) \$1,000,000 ~~combined single limit for bodily injury, including death to one or more persons and property damage~~ per occurrence;

(b) \$2,000,000 ~~policy aggregate for injury or death per single accident or occurrence~~

Auto Liability, including coverage on all owned, non-owned & rented vehicles

(a) \$1,000,000 for ~~bodily injury, including death to one or more persons and property damage~~ per occurrence,

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Comment [A2]: Note from Crown Risk Manager: CGL policies do not have a separate limit for bodily injury and property damage. They are written with a combined single limit.

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Deleted: (b) \$1,000,000 for bodily injury or death to any one person; (c) \$2,000,000 in aggregate for bodily injury and death per single accident or occurrence

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The ~~Commercial~~ General Liability insurance must include coverage for all of the following: comprehensive form, premises, complete operations and contractual coverage for the indemnification of the City and other contractual obligations herein. The Company may use umbrella or excess liability insurance to achieve the required coverage for ~~Commercial~~ General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Before the Effective Date of this Agreement, the Company shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this Section. The certificate(s) shall indicate that the City, and its agents, employees and officials, have been named as an additional insured on the ~~Commercial~~ General Liability, Automobile Liability, and any applicable umbrella and excess policies, with respect to all matters arising out of the Company operations contemplated by this Agreement. Thereafter, upon request of the City, Company shall furnish a current certificate(s) of insurance evidencing such coverage. Should any of the policies required herein be cancelled before the expiration date thereof ~~for any reason except in the case of non-payment of premium~~, the insurer affording coverage will endeavor to mail 30 days written notice of that cancellation to the City, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents, or representatives, or the issuer of this certificate.

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The provision of the insurance required in this section and the recovery of insurance proceeds hereunder by the City shall not limit the liability of the Company (if any) under other provisions of this Agreement.

b. Indemnification. ~~The~~ Company agrees to defend, indemnify and hold the City, and its agents, employees and officials, harmless from all suits, claims for damages (including personal injury or death and property damage), judgments, losses, expenses (including but not limited to reasonable attorneys' fees, court costs and other litigation costs) and liabilities (hereinafter collectively "~~City~~ Claims") which may arise, whether in whole or in part, out of or in connection with the installation, operation or maintenance of the ~~Small Cell Network or Equipment~~ or the Company's failure to perform any of its obligations under this Agreement. The City agrees to furnish Company written notice of any ~~City~~ Claims asserted against it and any request that the Company indemnify City (or its representatives) pursuant to this Section. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the City for ~~City~~ Claims resulting from the negligent or willful acts of the City (or its representatives), or from the actions by a

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person or entity other than the Company in connection with the City's use of the Public Service Pathway provided herein.

~~g. Performance Bond. Prior to the Effective Date, the Company will provide a Performance Bond in the amount of not less than Ninety Thousand Dollars (\$90,000.00) in favor of the City to secure the performance by the Company of its obligations under this Agreement. This Bond shall be issued by a surety qualified to do business in Alabama and reasonably satisfactory to the City.~~

9. Disputes/Enforcement/Default/Termination.

(a) **Dispute Resolution.** The Designated Representatives of the Parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If the Designated Representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each Party for consideration. If the Dispute cannot be resolved at the senior official level, either Party may request that the Dispute be mediated; if the Parties agree to mediate, each will bear its own costs of mediation, including attorneys' fees. However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism shall be litigation in a court that is located in Jefferson County, Alabama.

(b) **Breach/Notice of Breach.** In the event the Company fails to comply with any of its material obligations under this Agreement (a "Breach"), the City shall notify the Company in writing of the nature of the alleged noncompliance. The occurrences that constitute a material Breach by the Company, and may result in early termination of this Agreement and cancellation of the Franchise granted herein include the following:

- (1) Failure to make any payments to the City required in this Agreement;
- (2) Failure to maintain the insurance policies and coverage that are required hereunder;
- (3) Failure to provide or furnish the City any information required under this Agreement;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety;
- (5) The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the Small Cell Network or the assets of the Company;
- (6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

Deleted: (ii) To the extent permitted by applicable law, The City agrees to defend, indemnify and hold the Company, and its agents, employees and officials, harmless from all suits, claims for damages (including personal injury or death and property damage), judgments, losses, expenses (including but not limited to reasonable attorneys' fees, court costs and other litigation costs) and liabilities (hereinafter collectively "Company Claims") which may arise, whether in whole or in part, out of or in connection with the City's failure to perform any of its obligations under this Agreement. The Company agrees to furnish Company written notice of any Company Claims asserted against it and any request that the City indemnify City (or its representatives) pursuant to this Section. Notwithstanding the foregoing, the City shall not be obligated to indemnify the Company for Company Claims resulting from the negligent or willful acts of the Company (or its representatives). ¶

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(7) If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the **Small Cell Network**; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

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The Company shall not be deemed to have defaulted this Agreement or be in noncompliance with its provisions, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond the ability to the Company to control; provided that the Company's excuse for nonperformance only shall remain in effect as long as the condition causing that circumstance remains in existence, and the Company is obligated to recommence its performance hereunder when upon the expiration of that condition.

(c) **Company's Right to Cure Breach or Respond.** The Company shall have thirty (30) days from receipt of the notice of a Breach as provided in subpart (a) above (1) to respond to the City by contesting the assertion of noncompliance, (2) to cure such breach, or (c) in the event that, by the nature of the Breach, it cannot be cured within the 30-day period for reasons beyond the reasonable control of the Company, to initiate reasonable steps to remedy such Breach and notify the City of the steps being taken and the projected date that they will be completed.

(d) Remedies. In the event that the Company fails to respond to the notice of Breach described in subpart (a), it contests the assertion of noncompliance pursuant to the procedures set forth in subpart (b), or it does not remedy the subject Breach within 30 days or by the date projected in subpart (b) above, the City may pursue any or all of the following remedies:

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1. Seek specific performance of any provision which reasonably lends itself to such a remedy;
2. Make a claim against any surety with respect to the Performance Bond which may be required to be posted;

3. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;
4. Seek any other available remedy permitted by law or in equity;
5. Take any other action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

(e) **Revocation of Franchise/Public Hearing.** In addition to the remedies stated above, the City may schedule a public hearing to investigate the Breach and consider whether to terminate this Agreement and revoke the Franchise. The City shall notify the Company in writing of the time and place of such hearing. Such public hearing may be held at the next regularly scheduled meeting of the City's governing body, or at such other time and place which is scheduled not less than five business days from the City's notice of hearing. At that hearing the City shall give the Company an opportunity to state its position concerning the Breach and otherwise be heard, after which its governing body shall determine whether or not this Agreement shall be terminated and the Franchise be revoked. In that event, the City may terminate the Agreement and the revoke the Franchise effective ten (10) days following the determination by it governing body to terminate this Agreement.

(f) Nothing herein shall preclude the Company from petitioning the Circuit Court of Jefferson County, Alabama to challenge a determination by the governing body of the City to terminate this Agreement and revoke the Franchise. Such challenge must be taken within thirty (30) days of the issuance of that determination.

(g) **Obligations of Company on Expiration or Early Termination of Agreement.** Upon the expiration or early termination of this Agreement for any reason, the City may request that the Company, at its own expense and within a reasonable amount of time following that request, remove from the ROW any **Equipment** or facilities that the Company placed thereon to provide its services and restore the surrounding property to the condition that existed prior to its installation. Any **Equipment** not removed by the Company following that request may be left in place by the Company and deemed abandoned. Further, although the respective obligations of the Parties concerning further use of the ROW will cease upon the expiration or early termination of this Agreement, the Company's obligations to pay Franchise Fees, to permit the City to perform audits, to furnish information to the City required hereunder, and to indemnify the City and provide insurance with respect to events occurring before the termination shall survive and remain in effect for a period of two (2) years following the expiration or effective date of early termination.

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10. Designated Representatives/Notices.

The Parties appoint their respective representatives below to coordinate with the other on all matters pertinent to the administration of this Agreement (the "Designated Representative").

Designated Representative for City:

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City of Mountain Brook, Alabama
ATTENTION: City Manager
56 Church Street
Mountain Brook, AL 35213

Designated Representatives of Company:

Mailing Address:
Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8564
(724) 416-2000

Legal Notice:
Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: E. Blake Hawk, General
Counsel
(724) 416-2000

Billing & Administrative
Issues:
Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: Small Cell Contracts
Administration
(724)-416-2000

Deleted: Southern Light, LLC
ATTENTION: Kelly McGriff
General Counsel
107 St. Francis Street – Suite
1800
Mobile, AL 36602

Each Designated Representative also shall have the authority to act on behalf of its respective organization to transmit instructions and receive information. Either Party may substitute a Designated Representative other than the person named above upon provision of written notice.

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Any notice required hereunder to be sent in writing shall be sufficiently given (a) in writing and (b) when sent to the Designated Representative for the other Party via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the Party to be in receipt thereof.

II. Miscellaneous.

a. Amendment. This Agreement may be amended or modified only by a written instrument that is executed by duly authorized representatives of both Parties.

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b. Construction. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

c. No Presumption against Drafter. The Parties acknowledge that each Party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

d. Entire Agreement. This Agreement constitutes the entire agreement between the City and Company with respect to the subject matter contained herein and supersedes all prior or

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contemporaneous discussions, agreements, and/or representations of or between them, whether oral or written, regarding the subject matter hereof.

e. No Waiver. The failure of either Party to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a subsequent waiver of the right to compel enforcement of that or any other term, condition or provision. The respective rights, benefits and obligations under this Agreement may be waived only in a writing signed by the Parties.

f. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, officials, offices, directors, shareholders, agents, employees, attorneys, successors and assigns, and any parent, subsidiary or affiliated corporation or entity, as applicable.

g. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

h. Choice of Law. This Agreement shall be construed and interpreted according to the laws of the State of Alabama.

i. Assignment. The Company's interest in this Agreement and the Franchise shall not be assigned, sold, transferred, or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, a request by the Company for consent to the transfer of the rights and obligations of the Company to a parent, subsidiary, or other affiliate of the Company or to any successor in interest or entity acquiring fifty-one percent (51%) or more of the Company's stock or assets (a "Transfer(s)") shall be processed in the following manner. Along with its request for a Transfer, the Company shall provide the City's City Manager information reasonably demonstrating each of the following criteria (collectively the "Transfer Criteria"): (i) the transferee will have a financial strength after the proposed transfer at least equal to that of the Company immediately prior to the transfer; (ii) any such transferee assumes all of the Company's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with the Company's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Small Cell Network and comply with the Company's obligations hereunder. The Company shall give at least thirty (30) days' prior written notice (the "Transfer Notice") to the City of any such proposed Transfer and shall set forth with specificity in such Transfer Notice the reasons why the Company believes the Transfer Criteria have been satisfied. The City Manager shall be provided a reasonable period (the "Transfer Evaluation Period") from the date that the Company gives the City its Exempted Transfer Notice to object or consent in writing to the Transfer or the adequacy of the evidence regarding therein. In the event that the City Manager does not object to the Transfer within sixty (60) days following notice, consent to the Transfer shall be deemed given by the City. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the Company's request for transfer,

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j. Independent Contractors. The City and Company are independent contractors. The Company exclusively controls the methods and means by which it conducts its operations. Further, neither this Agreement nor any provision herein is intended make either Party the agent, fiduciary or partner of the other, or grant either Party any authority to bind the other to any obligation with a third party.

k. Other Representations. The Company and the City each represent to the other that it has the requisite power and authority to enter into this Agreement, that each has secured all necessary board, corporate or other required approval to enter this Agreement, and that its undersigned representatives are authorized to execute below on behalf of their respective organization.

m. Cooperation. The Company and the City shall cooperate fully with one another to execute any and all other documents and take whatever any additional actions (including, without limitation, the processing of permits) that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

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n. No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement

p. Attorneys' Fees. If (i) either Party breaches its obligations to the other hereunder, (ii) the non-defaulting Party should employ attorneys or incur other expenses in any legal action regarding such breach of this Agreement, and (iii) the non-defaulting Party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the defaulting Party, the losing Party in that proceeding will pay the prevailing Party its reasonable attorneys' fees and other reasonable expenses that are incurred in that breach-of-contract action.

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p. Severability. If any provision, part, section or subdivision of this Agreement shall be held invalid, illegal, unconstitutional or unenforceable for any reason, such holding shall not be construed to invalidate or impair its remaining provisions, which shall continue in full force and effect notwithstanding such holding.

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q. Exclusion of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EACH PARTY AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE OTHER ARISING FROM AN ALLEGED BREACH OF THIS AGREEMENT OR A FAILURE TO PERFORM ANY OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT MAY BE RECOVERED AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE AGGRIEVED PARTY'S ACTUAL, DIRECT DAMAGES ARISING FROM THE BREACH. EACH PARTY AGREES AND ACKNOWLEDGES THAT THE TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT NEITHER PARTY WOULD HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES

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(INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT.

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r. Licensing/Laws. Before commencing any operations contemplated hereunder, the Company, at its own expense, will obtain all licenses, permits or other governmental authorizations needed to construct the Small Cell Network, provide its services and perform its Operations, including without limitation, any business license issued by applicable governing authorities ("Licensing"). The Company agrees to maintain that Licensing throughout the performance of this Agreement.

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s. Immigration Act. The Company represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of this Agreement, (b) it (i) shall participate in the E-Verify program as required under the terms of the Act, (ii) will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program, (iii) shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act, and (iv) if it is found to be in violation of this provision, the Company shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

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(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

CROWN CASTLE NG EAST LLC

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By: _____
Name: _____
Title: _____
Date: _____

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
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EXHIBIT A – INITIAL
PROPOSED ROUTE OF
SYSTEMSMALL CELL NETWORK¶
See attached Map.¶
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(the "Fiber Optic System" or "SystemSmall Cell Network SystemNetwork" or "System")

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(the "Small Cell Technology Facilities Ordinance" or "Ordinance")

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WHEREAS, the areas in the City at which the Company initially intends to construct its Fiber Optic SystemSystem are shown on the map that is attached as Exhibit A;

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WHEREAS,

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the services to be provided by the Company over its System concern the transport of data, voice or video communications between locations in the City in which such communications may both originate and terminate in the City, or may only originate or terminate in it;

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, however, that such approval shall not be unreasonably withheld, conditioned, or delayed. In addition, the City agrees to process applications, if required, pursuant to the terms of and within the timeframes provided by the FCC's Declaratory Ruling, WT Docket No. 08-165, FCC 09-99, November 18, 2009;

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; provided, however, that the permit fee and process that the City requests from the Company are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). In the case of generally-applicable construction permits, the City agrees to review and approve the Company's applications within thirty (30) calendar days of submittal, and, if no comment is received in writing within thirty (30) calendar days, the application will be deemed approved. In the case of attachments to utility-owned pole infrastructure, or to any pole the Company intends to place in the ROW, the

Company agrees to provide the City with a list of proposed attachment locations in advance of its deployment to the City, and the City agrees to use reasonable efforts to review and approve such list within ten (10) business days of submittal. If no written comment is received by the Company from the City within ten (10) business days, the application shall be considered approved, and no further action will be required prior to the Company's installation. Notwithstanding the foregoing, the City agrees to process applications for upgrades, modifications, colocations and other applicable requests, if application is required, pursuant to the terms of Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") and the terms and timeframes provided by the FCC's Report and Order, WT Docket No. 13-238, FCC 14-153, October 17, 2014, as respectively applicable;