# MUSKEGON COUNTY ROAD COMMISSION PERMIT POLICY
# FOR
# SAFELY ALLOWING LIMITED WIRELESS FACILITIES, WIRELESS SUPPORT STRUCTURES, AND UTILITY POLES ACCESS WITHIN THE COUNTY ROAD RIGHTS-OF-WAY

**WHEREAS**, the Board of County Road Commissioners for the County of Muskegon (the "Board" or "Road Commission") is a body corporate with the statutory mandate created by MCL 224.9 to formulate policy and to perform those official duties imposed by law or delegated by the Muskegon County Board of Commissioners; and,

**WHEREAS**, real property interests—including easements, various fees, and the right to regulate related to the use of public rights-of-way within the county road system—have been vested in the Road Commission to be held in trust for the benefit of the public; and,

**WHEREAS,** the Road Commission intends to discharge its obligations as trustee of those certain real property interests in a manner that benefits and protects the public generally, and any adjacent landowners specifically; and,

**WHEREAS**, Article 7, §29 of the Michigan Constitution of 1963 reserves to county road commissions the reasonable control of their highways, streets, alleys and public places, and specifically prohibits any person, partnership, association or corporation, public or private, from operating a public utility within the highways, streets, alleys and public places of any county without first obtaining the consent of the duly constituted authority of the county road commission; and,

**WHEREAS**, MCL 247.184 requires the consent of the Road Commission before any public utility may construct wires, cables, poles or like structures upon, over or under a county right-of-way including any improved highway or bridge; and,

**WHEREAS**, MCL 224.19b(1) requires any person, partnership, association, corporation or governmental entity to obtain a permit from the Road Commission (and the applicable township, city or village if required by those entities) before constructing, operating, maintaining or removing any facility or performing any work within a county highway right-of-way; and,

**WHEREAS**, MCL 224.19b(2) empowers a county road commission to adopt reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection and related expenses; and,

**WHEREAS**, MCL 691.1402 charges a county road commission with maintaining highways under its jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel; and,

**WHEREAS**, MCL 460.1301, et seq., provides for the regulation by state or local governmental authorities of the activities of wireless infrastructure providers and wireless services providers and of wireless facilities, wireless support structures, and utility poles; and,

**WHEREAS**, communications technologies are constantly evolving, resulting in the potential for proliferation of communication service facilities within the public rights-of-way which carry the potential, if not appropriately managed, to jeopardize the safety and convenience of the public; and,

**WHEREAS**, those seeking to install and operate wireless facilities, wireless support structures, and utility poles within county highway rights-of-way to meet demand for such service, gain a pecuniary profit therefrom; and,

**WHEREAS**, certain entities seeking to install wireless facilities, wireless support structures, and utility poles claim public right-of-way access by virtue of MCL 460.1301, et seq., regarding which the Road Commission specifically reserves its right to challenge this claimed right-of-way access through any appropriate legal means; and,

**WHEREAS**, the Road Commission has made significant investments of time and resources in the acquisition, construction, repair and maintenance of the public rights-of-way under its jurisdiction, for the principal purpose of making such rights-of-way safe and convenient for public travel, and such investment has enhanced the utility and value of those public ways; and,

**WHEREAS**, the public rights-of-way under the Road Commission's jurisdiction are used by and useful to private or public enterprises including wireless infrastructure providers and wireless services providers and others engaged in providing wireless services to citizens, institutions, and businesses that are served by the county highway system; and,

**WHEREAS**, the right to access and/or occupy portions of such public rights-of-way for limited times, for the business of providing wireless services is a valuable economic privilege; and,

**WHEREAS**, beneficial competition between providers of wireless services can be furthered by the Road Commission's consent to locate within and for rights to use the public rights-of-way on non-discriminatory and competitively neutral terms and conditions; and,

**WHEREAS**, the Applicant is a private or public enterprise engaged in installing facilities related to and/or providing various wireless services; and,

**WHEREAS**, the Road Commission will grant its consent pursuant to its constitutional and statutory authority to manage and control its public rights-of-way, and will issue a permit to a wireless services provider or a wireless infrastructure provider in consideration of the terms and conditions set forth herein:

1. Purposes

The purposes of this Policy are to balance the interests of protecting the public from harm with the interests of the public and applicants in the expansion of wireless services via the preceding and following statements of interest:

1.1. Establish a local policy concerning wireless services for use of the public rights-of-way that is consistent with MCL 460.1301, et seq., and also serves the Road Commission's statutory mandate to make the rights-of-way under its jurisdiction safe for public travel;

1.2. The Road Commission specifically reserves its right to alter, amend and adjust this policy where public safety or convenience requires on a per application basis;

1.3. Establish a local policy that promotes beneficial competition between wireless services providers and wireless providers on non-discriminatory and competitively neutral terms and conditions; and that ensures that the Road Commission retains the authority and ability to act to protect the public safety and welfare in the face of multiple rapidly-changing industries, including the wireless communications industry, that are placing increasing demand on public property and resources;

1.4. Consistent with constitutional, statutory and administrative regulatory mandate, establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the use of public rights-of-way by wireless services providers and wireless providers, and their respective facilities and licenses;

1.5. Consistent with constitutional, statutory and administrative regulatory mandate, permit and manage reasonable access to the public rights-of-way under the jurisdiction of the Road Commission for wireless services purposes on a competitively neutral basis, to the extent required by law;

1.6. Consistent with constitutional, statutory and administrative regulatory mandate, conserve the limited physical capacity of the public rights-of-way held in trust for the benefit of the public by the Road Commission, and

over which the Road Commission shares jurisdiction with other governmental entities;

1.7. Assure that the Road Commission's current and ongoing actual costs of granting and regulating access to and use of its public rights-of-way are fully paid by the persons seeking such access and causing such costs;

1.8. Secure fair and reasonable compensation to the Road Commission and the residents of Muskegon County, in a nondiscriminatory manner, for permitting use of the public rights-of-way;

1.9. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground facilities;

1.10. Assure that all persons or entities providing wireless services within public rights-of-way in the county highway system comply with all state, federal and local laws and administrative rules and regulations;

1.11. Enable the Road Commission to manage its obligations to the public generally, and adjacent landowners specifically, consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and

1.12. Reserve to the Road Commission and provide for the fullest exercise possible of its authority and discretion to require that:

1.12.1. Wireless facilities, wireless support structures, and utility poles are installed and maintained within public rights-of-way under the jurisdiction of the Road Commission in such manner and at such points so as not to inconvenience the public use of the public rights-of-way or to adversely affect the public safety and welfare;

1.12.2. Consistent with constitutional, statutory and administrative regulatory mandate, all wireless services providers and wireless infrastructure providers using the rights-of-way under the jurisdiction of the Road Commission shall be required to defend, reimburse, indemnify and hold harmless the Road Commission for the all costs, fees, expenses and damages incurred by the Road Commission by reason of the construction or presence in the public rights-of-way of the facilities of such users. Further, that insurance and bonding be secured to assure that such defense, reimbursement and indemnity is available.

## 2. Definitions

2.1. This Policy adopts the definitions set forth in MCL 460.1301, et seq., Any words not defined in those statutes shall be construed consistent with Title 47 of the United States Code and Chapter 484 of the Michigan Compiled Laws. References to governmental entities (whether persons or entities)

refer to those entities or their successors in authority. If specific provisions of law are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereafter enacted or amended. “Applicant” means any person applying for a right-of-way permit pursuant to MCL 460.1301, et seq.

2.2. “Person” means an individual, partnership, cooperative, association, private
corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.

2.3. “Permit” or “right-of-way permit” as used herein means the Road Commission’s legal authorization, terminable as defined in the permit, to use a particular, discrete, and limited portion of the public right-of-way to construct, operate, or repair a wireless support structure, wireless facility, or utility pole, including any permit special terms and conditions. The term “permit” or “right-of-way permit” shall not mean or include:

2.3.1. Any other permit, authorization, agreement or franchise required for the privilege of transacting and carrying on a business within the applicable county, city, village or township required by state or local law;

2.3.2. Any other permit, authorization or agreement required in connection with operations on public streets or property.

2.3.3. Any other permits, authorization or agreements required for occupying any public or private property to which access is not specifically granted by statute or by the right-of-way permit.

3. Policy Guidelines

The administration of this Policy shall be governed by the following Communication Service Provider Facility policy guidelines:

3.1. The Road Commission supports efforts to establish an open, competitive marketplace for wireless services that also serves the Road Commission’s statutory mandate to promote safety and convenience in the use of public rights-of-way under its jurisdiction. The Road Commission promotes and encourages competition for wireless services that make the latest and best technology available and keep service prices affordable for all county residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all wireless services providers and wireless infrastructure providers and the preservation of local authority over matters of local impact.

3.2. The Road Commission recognizes that to balance the needs and interests of the public in the management of the rights-of-way together

with the desire of the wireless services and wireless infrastructure services industries to access such rights-of-way, facilities supporting wireless services may be integrated into the rights-of-way in conformity principally with community standards, also taking into account industry standards and best practices. Guidelines identifying community standards together with an understanding of industry standards and best practices may be incorporated into the terms and conditions of the Road Commission's right-of-way permit and permit process and may change from time to time, in the Road Commission's sole judgment and discretion.

3.3. Use/Installation Priority Preference Considerations

3.3.1. The Road Commission's primary goal is to make and maintain the right-of- ways under its jurisdiction safe and convenient for public travel. To further this goal, the Road Commission recites the following siting priority preferences, which shall be enforced wherever possible under existing constitutional, state, and federal law, as well as any applicable administrative rules and regulations, in the Road Commission's discretion:

3.3.1.1. Collocation on an existing facility outside the right-of-way shall be preferred to collocation on an existing facility within the right-of-way.

3.3.1.2. Locating a new wireless support structure or utility pole outside the right–of-way shall be preferred to locating a new wireless support structure or utility pole within the right-of-way.

3.3.1.3. Collocation on an existing wireless support structure or utility pole within the right-of-way shall be preferred to locating a new wireless support structure or utility pole within the right-of-way.

3.3.1.4. Locating a new wireless support structure or utility pole in the right-of–way shall only be permitted when the Applicant demonstrates, in the Road Commission's judgement, that locating a new wireless support structure or utility pole outside of the right-of-way, or collocating on any existing facility, is not possible or practical.

3.3.1.5. Where possible and practical, wireless facilities will be required to be located below ground where other existing facilities or structures are located below ground.

3.3.2. Collocation Guidelines

3.3.2.1. Consistent with constitutional, state, and federal law, as well as administrative rules and regulations, all permit applications shall be subject to collocation with existing structures where possible and practical. Mandatory future collocation of all subsequent wireless facilities shall be

required where possible and practical for any newly authorized structure under this Policy.

3.3.2.2. Any application that is not for a collocated wireless facility must contain a statement justifying why collocation is not possible or practical. Such statement shall include:

3.3.2.2.1. Such structure and technical information and other justifications as are necessary to document the reasons why collocation is not possible or practical, including all communication of denials of collocation requests from 3rd party entities; and

3.3.2.2.2. A list of all eligible support structures and alternative structures considered as alternatives to the proposed location.

3.3.2.2.3. A written explanation why the alternatives considered were not possible or practical due to technical or physical constraints.

3.3.3. Consistent with constitutional, state, and federal law, as well as administrative rules and regulations, stealth installations or otherwise aesthetically consistent designs shall be required at the discretion of the Road Commission and will generally be similar to the existing infrastructure in the area.

3.3.4. Consistent with constitutional, state, and federal law, as well as administrative rules and regulations, new structures shall be limited to 40 feet in height, unless otherwise shown to be needed by the applicant based upon the technical characteristics of the area or other considerations, including collocation. The dimensions of new facilities will generally not be permitted to exceed existing infrastructure in the same vicinity.

3.3.5. To the greatest extent possible and practical, placement of such wireless support structures and utility poles in Industrial Zones shall be preferred, followed by Commercial Zones, followed by Residential Zones.

3.3.6. Where possible and practical, location on private property shall be preferred to location on public property.

3.3.6.1. An application shall contain a statement explaining all alternative sites considered, including private property, and why such alternatives are not possible or practical.

3.3.7. The Road Commission will manage access to the public rights-of-way for wireless services providers and wireless infrastructure providers in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and, to the extent allowed under applicable law, to receive fair compensation. The public interest will be protected by collecting associated fees and administrative costs for use of the public rights-of-way under the jurisdiction of the Road Commission.

3.3.8. Right-of-way permits for location of wireless facilities and all supporting equipment and wireless support structures will be managed to preserve the integrity of the county highway system's infrastructure, ensure efficient use of the property under the jurisdiction of the Road Commission, and ensure compliance with state, federal and local law.

3.3.9. In order to effectively manage and regulate the use of public rights-of-way under the Road Commission's jurisdiction in the best interests of the public, it is necessary for the Road Commission to reserve and exercise all proprietary, legislative, administrative and discretionary authority it may have to the full extent allowed or not prohibited by law and nothing in this policy shall be construed to diminish or in any way to limit the proprietary, discretionary, administrative or legislative authority of the Road Commission and its officials as respects the management and use of the Road Commission's public rights-of-way or in respect to the granting, delaying, or denying any right-of-way permit.

## 4. General Provisions

4.1. No wireless services provider or wireless infrastructure provider shall install, construct, or otherwise place within public right-of-way under the jurisdiction of the Muskegon County Road Commission any wireless facilities, wireless support structures or utility poles except pursuant to the provisions of this Policy.

4.2. A wireless services provider or a wireless infrastructure provider must obtain a right-of-way permit under this Policy from the Road Commission prior to constructing any wireless facilities, wireless support structures or utility poles within a right-of-way under the jurisdiction of the Road Commission. The fact that a particular permitted wireless support structure, wireless facility, or utility pole may be used for multiple purposes does not obviate the need to obtain a permit for such purposes unless applicable federal or state law prohibits the Road Commission from requiring such additional permit or permits. No permit shall become effective without the grantee signing an acceptance of the permit.

4.3. A wireless services provider or a wireless infrastructure provider must provide a complete written right-of-way permit application on a form

prescribed by the Road Commission, along with all requested supporting documentation.

4.4. If a right-of-way permit is granted pursuant to this Policy, a wireless services provider and a wireless infrastructure provider must agree to abide by the terms and conditions imposed by the permit and any permit special terms and conditions.

4.5. A right-of-way permit under this Policy shall not convey equitable or legal title to the public rights-of-way. The right granted is only the right to occupy those portions of the public right-of-way to which the Road Commission has the right to grant access, for the purposes and the time period stated in the permit, and the right may not be subdivided or subleased. A right-of-way permit shall not grant a vested right for any wireless facilities, wireless support structures or utility poles to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the Road Commission and the facility therein removed at the cost of the operator in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public interest as determined by the Road Commission.

4.5.1. A wireless services provider or a wireless infrastructure provider shall immediately (subject to seasonal work restrictions) restore, at its sole expense, in a manner approved by the Road Commission, any portion of the public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the wireless facilities, wireless support structures or utility poles, to a reasonably equivalent or better condition as that which existed prior to the disturbance. In the event that the wireless services provider or wireless infrastructure provider, or its contractors or subcontractors, fail to make such repair within a reasonable time, the Road Commission may make the repair and the wireless services provider or wireless infrastructure provider shall pay the costs the Road Commission incurs for such repair.

4.6. No reference herein, or in any right-of-way permit under this Policy, shall be deemed to be a representation or guarantee by the Road Commission that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a permit shall be deemed to grant no more than those rights which the Road Commission may have the undisputed right and power to give.

4.7. Before any right-of-way permit will be issued, a wireless services provider or wireless infrastructure provider must demonstrate that it has obtained the necessary permits and/or consent of all units of state, local or federal government vested by law with the authority to require and grant permits and/or consent.

5. Fees and Costs.

5.1. To the full extent permitted by law, recovery of all Road Commission costs related to the issuance of a right-of-way permit, or a consent fee, may be charged to a wireless services provider or wireless infrastructure provider related to its installation and maintenance of wireless facilities, wireless support structures or utility poles in the right-of-way. Any such permit fee shall be approved by the Board of County Road Commissioners.

5.2. Pursuant to applicable constitutional, federal and state law, and administrative rules and regulations, the wireless services provider or wireless infrastructure provider shall provide security, in a manner acceptable to the Road Commission, to ensure compliance with its obligations under Section 4.5 and 4.5.1 of this Policy to remove wireless facilities, wireless support structures or utility poles, and restore the adjacent rights-of-way at the termination of any Permit.

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