

**ORDINANCE NO. 17-M-33**

**AN ORDINANCE BY THE CITY OF SCHERTZ, TEXAS, APPROVING A DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES, NODE SUPPORT POLES AND TRANSPORT FACILITIES; AND APPROVING A POLE ATTACHMENT AGREEMENT REGULATING THE INSTALLATION OF NETWORK NODES AND TRANSPORT FACILITIES ON CITY SERVICE POLES AND UTILITY POLES; DECLARING GOVERNING LAW; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.**

**WHEREAS**, the City of Schertz, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

**WHEREAS**, Chapter 284 of the Texas Local Government Code (“the Code”) allows certain wireless network providers to install in the public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as “Micro Network Nodes”, “Network Nodes”, “Node Support Poles”, and “Transport Facilities”; and

**WHEREAS**, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City desires to enact a *Design Manual by the City of Schertz, Texas for the Installation of Network Nodes, Node Support Poles and Transport Facilities* (“the Design Manual”) in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

**WHEREAS**, the City Council desires to approve a *Pole Attachment Agreement* by which wireless telecommunication network providers may attach and collocate their network nodes on city service and utility poles subject to the Code, the Design Manual, and the City Right-of-Way Management Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SCHERTZ, TEXAS THAT:

**SECTION I**  
**FINDINGS OF FACT**

The forgoing recitals are incorporated into this Ordinance as true and correct findings of fact.

**SECTION II.**  
**APPROVING DESIGN MANUAL**

The City Council hereby approves the *Design Manual by the City of Schertz, Texas for the Installation of Network Nodes and Node Support Poles*, which is attached here as Exhibit "A."

**SECTION III.**  
**APPROVING POLE ATTACHMENT AGREEMENT**

The City Council hereby approves the *Pole Attachment Agreement*, which is attached here as Exhibit "B."

**SECTION IV.**  
**GOVERNING LAW**

This Ordinance shall be construed in accordance with Chapter 284 of the Texas Local Government Code ("the Code") to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

**SECTION V.**  
**REPEALING ALL ORDINANCES IN CONFLICT**

All other ordinances or parts of ordinances inconsistent or in conflict herewith, or to the extent of such inconsistency or conflict are hereby repealed.

**SECTION VI.**  
**SAVINGS CLAUSE**

This City Council of the City of Schertz, Texas does hereby declares that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would

have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

**SECTION V.**  
**COMPLIANCE WITH OPEN MEETINGS ACT**

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

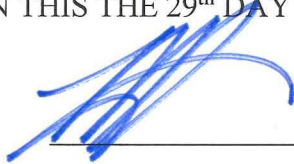
**SECTION VI.**  
**DECLARATION OF AN EMERGENCY**

It is hereby officially found and determined that, pursuant to the authority given the City Council under Section 4.09(e) of the Charter of the City of Schertz, an emergency exists requiring this ordinance to be voted upon and rejected or passed at the meeting at which it was first introduced.

**SECTION VII.**  
**EFFECTIVE DATE.**

This Ordinance shall become effective on September 1, 2017.

**PASSED AND APPROVED ON THIS THE 29<sup>th</sup> DAY OF AUGUST 2017.**



\_\_\_\_\_  
Michael R. Carpenter, Mayor

ATTEST:



\_\_\_\_\_  
Brenda Dennis, City Secretary

(SEAL OF THE CITY)

# **Design Manual by the City of Schertz, Texas**

*for the*

*Installation of Network Nodes, Node Support Poles and  
Transport Facilities*

*pursuant to Tex. Loc. Gov. Code, Chapter 284.*

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## **SECTION 1. PURPOSE AND APPLICABILITY.**

The City of Schertz, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

*Purpose:* Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles”.

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301<sup>1</sup>, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

*Applicability:* This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Transport Facilities, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

*City Rights-of-Way Management Ordinance:* A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

## **SECTION 2. DEFINITIONS.**

The definitions as used in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.<sup>2</sup>

*Abandon* and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

*Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

*Applicable codes* means:

- (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

*Assimilation* means the process by which the City allows for the placement of *Network Nodes* on poles within the public ROW by a *Network Provider* within the scope of SB1004.

*Broadband Operations Representative Group* means any *Network provider* within the scope of SB1004.

*City* means the City of Schertz, Texas or its lawful successor.

*City Council* means the municipal governing body of the City of Schertz, Texas.

*City Manager* means the Manager or his/her designee for the City of Schertz, Texas, or designee.

*Chapter 284* means Tex. Loc. Gov. Code, Chapter 284.

*The Collective* means the entire system of *network providers and network nodes*, in total, by all providers and in all locations within the scope of SB1004.

*Collocate* and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

*Concealment, Cloaking Device or Camouflaged* means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed, Cloaked or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches or as owls or other appropriate Bird of Prey.

*Decorative pole* means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

*Design District* means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and

nondiscriminatory basis, including Planned Development and/or Main Street areas with decorative pole standards.

*Disaster emergency* or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

*Distributed Antenna System* or *DAS* shall be included as a type of “Network Node.”

*Easement* means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

*Federal Communications Commission* or *FCC* means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

*Highway right-of-way* means right-of-way adjacent to a state or federal highway.

*Historic district* means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

*Law* means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

*Local* means within the geographical boundaries of the City.

*Location* means the City approved and lawfully permitted location for the Network Node.

*Macro tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

*Micro network node* means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

*Municipal park* means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

*Municipally owned utility pole* means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

*MUTCD* means Manual of Uniform Traffic Control Devices.

*Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:



- (i) equipment associated with wireless communications;
  - (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
  - (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (B) does not include:
- (i) an electric generator;
  - (ii) a pole; or
  - (iii) a macro tower

*Network provider* means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
  - (i) network nodes; or
  - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

*Next Generation* means future broadband technologies not yet identified in this Design Manual.

*Node support pole* means a pole installed by a network provider for the primary purpose of supporting a network node.

*Permit* means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

*Pole* means a service pole, municipally owned utility pole, node support pole, or utility pole.

*Private easement* means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

*Provider* has the same meaning as “Network Provider.”

*Public right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

*Public right-of-way management ordinance* means an ordinance that complies with Chapter 284, Subchapter C.

*SCADA or Supervisory Control and Data Acquisition systems* means a category of software application programs and hardware used by the City for process control and gathering of data in real time from remote locations in order to monitor equipment and conditions of the City public

water and wastewater utility facilities. These systems may utilize both cable and wireless communications.

*Service pole* means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

*Small cell* shall be included as a type of “Network Node.”

*Street* means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

*SWPPP* shall mean Storm Water Pollution Prevention Plan.

*TAS* means Texas Accessibility Standards.

*Traffic Signal* means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

*Transport facility* means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

*Underground Requirement Area* shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

*User* means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

*Utility pole* means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

*Wireless service* means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

*Wireless service provider* means a person that provides wireless service to the public.

*Wireless facilities* mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

### **SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

#### **A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.**

1. ***Municipal Parks and Residential Areas.*** In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

a. not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

b. adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

1.2 Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. ***Design Districts and Historic Districts.*** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District and/or or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground

equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. A Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

## **B. Least preferable locations.**

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities. It is the responsibility of the Network Provider to ensure full compliance with all private deeds restrictions. Such private deed restrictions, however, are not enforced by the City and remain the enforcement responsibility of the party with standing and not the City.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated

by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

**C. Most preferable locations**

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

**D. Designated Areas.**

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

3. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

**E. Exceptions**

The City by its discretionary consent and agreement may grant exceptions to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

**F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.**

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

3. *Municipal Service Poles:*

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

#### **SECTION 4. GUIDELINES ON PLACEMENT.**

##### **A. Generally.**

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the City's publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

##### **B. General Requirements and Information:**

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.<sup>3</sup>

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication or SCADA Networks.*

- a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system,

traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

*4. Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager or his/her designee and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500.00 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

**B. Underground Requirement Areas.**

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Dig Tess must be called so that the area can be flagged for underground utilities.

### **C. Network Node facilities placement:**

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

### **D. New Node Support Poles.**

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- b. 55 feet above ground level.

### **E. Ground Equipment.**

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. *Ground Equipment near Municipal Parks.* For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager or his/her designee in writing.



### *3. Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City Manager or his/her designee, or designee, may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

### *4. Water, Sewer and Storm Drainage Lines:*

Special precautions must be taken where underground fiber optic cable is installed in public street right-of-ways commonly used for utility corridors.

- a. Underground utilities and service connections must be identified prior to excavation. "811", "Dig Alert," "One Call," "Dig Tess," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.
- b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.
- c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe of avoid future damage.
- d. *Existing Water Lines:* No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line but at least 3 ½ feet from the edge of the water line unless the line is greater than 36" and then the placement shall be at least 6 ½ feet from the edge of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 ½ feet from the outside edge of a water line unless that water line is greater than 36" diameter and then the placement shall be at least 6 ½ feet from the outside edge of the water line.
- e. *Existing Sewer Lines:* No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line but at least 3 ½ feet from the edge of the sewer line unless the line is greater than 36" and then the placement shall be at least 6 ½ feet from the edge of the sewer line. When crossing a sewer

line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.

- f. *Existing Storm Drainage Lines:* No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line but at least 3 ½ feet from the edge of the storm drainage line unless the line is greater than 36" and then the placement shall be at least 6 ½ feet from the edge of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

*5. Blocking streets, roads, alleys or lanes:*

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

**F. Municipal Service Poles:**

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- a. Be encased in a separate conduit than the traffic light electronics;
- b. Have a separate electric power connection than the traffic signal structure; and
- c. Have a separate access point than the traffic signal structure; and

5. *Installations on Street signage:* Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

- a. Be encased in a separate conduit than any City signage electronics;
- b. Have a separate electric power connection than the signage structure;
- c. Have a separate access point than the signage structure; and

6. *Restoration of City facilities and private property:* The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original and also non-erosive condition.

## **SECTION 5. GENERAL AESTHETIC REQUIREMENTS**

### **A. Concealment.**

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

4. The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

### **B. New Node Support Pole Spacing.**

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

### **C. Minimize Ground Equipment Concentration.**

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

### **D. Allowed Colors.**

1. Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Colors in Historic Districts and Design Districts must be approved by the City Manager or his/her designee from a palette of approved colors if such palettes are contained within the Historic District and/or Design Districts guidelines. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous.

3. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas or by approved concealment or camouflage.

## **SECTION 6. ELECTRICAL SUPPLY**

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Public Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

## **SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.**

A. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

B. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

## **SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR**

### **A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.**

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager or his/her designee in writing not less than 10 business days prior to removal or

relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

#### **B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.**

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the City managing the public right-of-way

3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

4. Network Provider shall, at the City Manager or his/her designee's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager or his/her designee reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the traveling public's use for travel and transportation.

5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager or his/her designee within 90 days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

6. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

#### **C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.**

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related

ground equipment within the time frame and in the manner required by the City Manager or his/her designee if the City Manager or his/her designee reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager or his/her designee reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager or his/her designee if the City Manager or his/her designee reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager or his/her designee reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.

4. The City Manager or his/her designee shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

## **SECTION 9. INSTALLATION AND INSPECTIONS**

### **A. INSTALLATION.**

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager or his/her designee, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Manager or his/her designee. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

#### **B. INSPECTIONS.**

1. The City Manager or his/her designee, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. The City Manager or his/her designee, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Manager or his/her designee deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager or his/her designee shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

3. All permitted work shall be performed in strict adherence to all "applicable codes" and permit requirements. Upon completion of all permitted installations, a letter sealed by an engineer certifying that the installation has been inspected and does conform to all "applicable codes" and permit requirements shall be issued to the City of Schertz by the Network Provider who will be utilizing the installation.

4. The issuance of a permit is not a guarantee of placement. Another Network Provider may also obtain a permit from the City, issued in a non-exclusive, and non-discriminatory manner, for the same location. Such conflicts as may be discovered from time to time are opportunities for appropriate colocation and it is encouraged that each of the effected the Broadband Operators Representative Groups collocate as may be possible. All disputes over locations are between each provider and are private matters not the responsibility of the City.

#### **SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

1. Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way

management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager or his/her designee in writing of such removal or Abandonment and shall file with the City Manager or his/her designee the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Manager or his/her designee may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

## **SECTION 11. GENERAL PROVISIONS.**

1. **As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. A Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

3. For purposes of ROW safety for both the general public and of workers performing work in the ROW, a Network Provider shall provide the City with a listing and associated CAD/GIS digital format map of all active equipment annually. Such listing and digital map shall be submitted by January 20<sup>th</sup> of each calendar year.

3. **Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3.1 A Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or his/her designee or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.



**3. DRUG POLICY.** Drug policy of Network provider's personnel, and contractors in the public rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

**4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.** The City Council has currently appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under the law.

**5. OWNERSHIP.** Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable codes and ordinances, except to the extent not consistent with Chapter 284.

5.1 No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager or his/her designee prior to any work in the Right-of-Way.

**6. Tree Maintenance.** Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284. Tree and vegetation maintenance shall comply with all applicable State regulations as may be promulgated from time to time, and as amended.

6.1 A Network Provider, its contractors, and agents shall obtain written permission from the City Manager or his/her designee before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. The Network Provider shall trim trees and vegetation under the supervision and direction of a Certified Arborist. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**7. Signage.** Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

7.1 Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City Manager or his/her designee.

7.2 Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

**8. Graffiti Abatement.** Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

8.1 As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

**9. Restoration.**

9.1 A Network Provider shall restore and repair of the public rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

9.2 A Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager or his/her designee.

**10. Network provider's responsibility.**

10.1 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

10.2 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole, Transport Facility and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

## **SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION**

12.1 Should the Network Provider desire to deviate from any of the standards set forth in the Design Manual, the Network Provider may request an Administrative Hearing before a Board of Appeals. The City Council shall act as the Board of Appeals for a Request for Exemption.

12.2 The process for an application, hearing and vote shall follow the process set out for a plat appeal to the City Council.

## **SECTION 13-19 RESERVED**

## **SECTION 20. DESIGN MANUAL - UPDATES**

Placement or Modification of Micro Network Node, Network Node, Node Support Pole, Transport Facility, and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

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<sup>1</sup> Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

<sup>2</sup> The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent

to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or

collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.

<sup>3</sup> Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

- 
- (1) each antenna that does not have exposed elements and is attached to an existing structure or pole:
    - (A) must be located inside an enclosure of not more than six cubic feet in volume;
    - (B) may not exceed a height of three feet above the existing structure or pole; and
    - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
  - (2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
    - (A) must fit within an imaginary enclosure of not more than six cubic feet;
    - (B) may not exceed a height of three feet above the existing structure or pole; and
    - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
  - (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
    - (A) be more than 28 cubic feet in volume; or
    - (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
  - (4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
  - (5) pole-mounted enclosures may not be taller than five feet.
- (b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):
- (1) electric meters;
  - (2) concealment elements;
  - (3) telecommunications demarcation boxes;
  - (4) grounding equipment;
  - (5) power transfer switches;
  - (6) cut-off switches; and
  - (7) vertical cable runs for the connection of power and other services.
- (c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- (d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

*Drafter's Note: This Chapter 284 Agreement is to allow use of City Service Poles under Chapter 284. It is a template only. Each City must have it reviewed carefully by the City Attorney for conformity to existing City Ordinances, including but not limited to the City RoW Management Ord. to the extent that Ord. is not preempted by Chapter 284 for these wireless facilities being placed in the RoW. June 2017.*

## CITY OF SCHERTZ, TEXAS

### CHAPTER 284 SERVICE POLE COLLOCATION ATTACHMENT LICENSE AGREEMENT

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**List of Exhibits:**

***[Drafters note: List Exhibits as needed]***

**Exhibit [xxx]** Application for Collocation on Service Pole Permit. ***[Drafter's Note-City should prepare a form application-see sec. 4.1.1]***

**CITY OF SCHERTZ, TEXAS  
CHAPTER 284 SERVICE POLE COLLOCATION ATTACHMENT LICENSE  
AGREEMENT**

**THE STATE OF TEXAS**                   §  
  §  
**COUNTY OF GUADALUPE**           §

This **Service Pole Collocation Attachment License Agreement** (“Agreement”) is made by and between the City of Schertz, Texas, (“City”), a home-rule municipal corporation of the State of Texas, and \_\_\_\_\_, (“Network Provider” or “Licensee”), a \_\_\_\_\_ with its principal offices at \_\_\_\_\_. Pursuant to Tex. Loc. Gov. Code, Chapter 284 (“Chapter 284”), Section 284.056 and Section 284.101 (a) (3), the City enters into this Agreement to further detail the terms and conditions of Collocation of attachments of wireless Network Nodes to and on City Service Poles.

**RECITALS**

**WHEREAS**, Licensee, a Network Provider, as that term is defined in Chapter 284, is requesting to Collocate, which includes attachments, as that term is defined in Chapter 284, its Network Nodes, as defined in Chapter 284, to and on the City’s Service Poles, as that term is defined in Chapter 284, that are in the Public Right-of-Way to the extent permitted by Chapter 284; and

**WHEREAS**, Chapter 284 states “to the extent this state has delegated its fiduciary responsibility to municipalities as managers of a valuable public asset, the public right-of-way, this state is acting in its role as a landowner in balancing the needs of the public and the needs of the network providers by allowing access to the public right-of-way to place network nodes in the public right-of-way strictly within the terms of this chapter”; and

**WHEREAS**, Chapter 284 states “[i]t is the policy of this state, subject to state law and strictly within the requirements and limitations prescribed by this chapter, that municipalities: (1) retain the authority to manage the public right-of-way to ensure the health, safety, and welfare of the public; and (2) receive from network providers fair and reasonable compensation for use of the public right-of-way and for collocation on poles”; and

**WHEREAS**, Section 253 of the Federal Communications Act of 1934, as amended, including 47 U.S.C. § 253, acknowledges that the City has the authority to manage and control access to and use of the Public Right-of-Way within the City limits; and

**WHEREAS**, the City has been authorized by the State to act as fiduciary and trustee for the public, in exercising proprietary rights in its discretion to grant use of the Public Right-of-Way within the City limits and condition that use in accordance with Chapter 284; and

**WHEREAS**, Chapter 284, Section 284.101 (a)-(b), et al, set forth the conditions to access and Collocation on the City’s Service Poles that are in the Public Right-of-Way of the Network Nodes to include compliance with the Applicable Codes, and Public Right-of-Way Management

Ordinances, and the Chapter 284 limits to the height, width, safety and aesthetic requirements of Network Nodes; and

**WHEREAS**, the Licensee shall compensate the City pursuant to applicable state law, including Chapter 284, for the collocation of the Network Nodes on Service Poles in the City's Public Right-of-Way; and

**WHEREAS**, the Licensee's non-exclusive use at locations in its Public Right-of-Way, are subject to the terms and conditions set forth herein, and pursuant to Permits issued by the City Public Works Department; and

**WHEREAS**, the City and Licensee desire by this Agreement to set forth their understanding of such matters.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein below, City and Licensee agree as follows:

## **ARTICLE 1. PARTIES**

### **1.1. ADDRESSES**

The initial address of the parties, which either party may change at any time by giving written notice to the other party pursuant to the terms of this Agreement, are as follows:

#### **City of Schertz**

Attn: City Manager John Kessel

1400 Schertz Parkway

Schertz, Texas 78154

Email: jkessel@schertz.com

#### **Network Provider and Licensee**

Attn: \_\_\_\_\_

Street \_\_\_\_\_

Texas, \_\_\_\_\_

Email: \_\_\_\_\_

## **ARTICLE 2. DEFINITIONS**

2.1. As used in this Agreement, the definitions as used in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used, unless otherwise noted in Section 2.1, below:<sup>1</sup>

2.1.1. *Abandon* and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes,

handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

- 2.1.2. *Affiliate* means (a) any entity who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with the Licensee; (b) any entity acquiring substantially all of the assets of Licensee in the market defined by the Federal Communications Commission in which the Locations are located; or (c) any successor entity in a merger, acquisition, or other business reorganization involving Licensee. For purposes of this definition, “own” means to own an equity or other financial interest (or the equivalent thereof) of more than 10 percent or any management interest.
- 2.1.3. *Agreement* means this contract between the Parties, including any exhibits and any written amendments as authorized by this Agreement.
- 2.1.4. *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- 2.1.5. *Applicable code or codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and local amendments to those codes to the extent not inconsistent with Chapter 284.
- 2.1.6. *City* is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.7. *City Attorney* means the currently appointed or acting City Attorney or his/her designee.
- 2.1.8. *City Engineer* means the city engineer for the City from City’s Public Works Department, or its successor department, or a person he or she designates.
- 2.1.9. *City Manager* means the current and successor City Manager of the City.
- 2.1.10. *Collocate* and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.
- 2.1.11. *Concealment or Camouflaged* means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding

area design, painted to match the supporting area, or disguised with artificial tree branches.

- 2.1.12. *Decorative pole* means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.
- 2.1.13. *Design District* means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
- 2.1.14. *Design Manual* means the City Design Manual for the Installation of Network Nodes and Node Support Poles pursuant to Tex. Loc. Gov. Code, Chapter 284 enacted and adopted by the City in accordance with Chapter 284, Sec. 284.108.
- 2.1.15. *Director* means the Director of Public Works Department, or its successor department, or a person he or she designates
- 2.1.16. *Disaster emergency* or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.
- 2.1.17. *Distributed Antenna System or DAS* shall be included as a type of “Network Node.”
- 2.1.18. *Effective Date* means that date signed by the City Manager on the signature page of this Agreement for each respective Licensee.
- 2.1.19. *Ground Equipment* means a Wireless Facility that is located on the surface of the Public Right-of-Way in an approved permit that is immediately adjacent to the Pole on which the Network Node is located.
- 2.1.20. *Historic District* recognized by the City, state or federal government under the City Code of Ordinances, State Law, including, but not limited to, Sec. 442.001(3) of the Texas Government Code, a federal law, including, but not limited to, 16 U.S.C. § 470.
- 2.1.21. *Historic Landmark* recognized by the City, state or federal government under the City Code of Ordinances, State Law, including, but not limited to, Sec. 442.001(3) of the Texas Government Code, a federal law, including, but not limited to, 16 U.S.C. § 470.
- 2.1.22. *Law* means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance

- 2.1.23. *Licensee and Network Provider* mean \_\_\_\_\_ [Add-**name of entity**] and includes its successors and assigns.
- 2.1.24. *Location* means the location of a Service Pole in the Public Right-of-Way in which Licensee is authorized to place its Network Node, provided that it has obtained all Permits.
- 2.1.25. *Macro tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.
- 2.1.26. *Micro network node* means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.
- 2.1.27. *Modification* means any work in the Public Right-of-Way, or alteration of a Wireless Facility that is not substantially similar in size or is a change in the Wireless Facility's location in the Public Right-of-Way or its physical position on the Pole except those alterations or changes that are excepted from requiring a permit under Chapter 284, Sec. 284.157 (a) and (b) do not constitute Modifications.
- 2.1.28. *Municipal Park* means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.
- 2.1.29. *Municipally owned utility pole* means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.
- 2.1.30. *MUTCD* means Manual of Uniform Traffic Control Devices.
- 2.1.31. *Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term: (A) includes: (i) equipment associated with wireless communications; (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and (B) does not include: (i) an electric generator; (ii) a pole; or (iii) a macro tower.
- 2.1.32. *Network provider* means: (A) a wireless service provider; or (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: (i) network nodes; or (ii) node support poles or any other structure that supports or is capable of supporting a network node.
- 2.1.33. *Party or Parties* mean the Licensee and City, individually or collectively as indicated in the context in which it appears.

- 2.1.34. *Other Party or Other Parties* means a Chapter 284 Wireless Service provider who is not a Party to this Agreement.
- 2.1.35. *Node support pole* means a pole installed by a network provider for the primary purpose of supporting a network node.
- 2.1.36. *Permit* means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.
- 2.1.37. *Pole* means a service pole, municipally owned utility pole, node support pole, or utility pole
- 2.1.38. *Provider* has the same meaning as “Network Provider.”
- 2.1.39. *Public right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include: (A) a private easement; or (B) the airwaves above a public right-of-way with regard to wireless telecommunications.
- 2.1.40. *Public right-of-way management ordinance* means an ordinance of the City that complies with Chapter 284, Subchapter C.
- 2.1.41. *Public right-of-way rate* means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality pursuant to Chapter 284, Sec. 284.053.
- 2.1.42. *Rental Fees* means as described in Article 5 herein.
- 2.1.43. *School* means an educational institution that offers a course of instruction for students in one or more grades from kindergarten through grade 12
- 2.1.44. *Service pole* means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including: (A) a pole that supports traffic control functions; (B) a structure for signage; (C) a pole that supports lighting, other than a decorative pole; and (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.
- 2.1.45. *Small cell* shall be included as a type of “Network Node.”
- 2.1.46. *Street* means only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a Public Right-of-Way may include sidewalks and utility easements, a “Street” does not. A



“street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

2.1.47. *TAS* means Texas Accessibility Standards.

2.1.48. *Traffic Signal* means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

2.1.49. *Transport facility* means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes

2.1.50. *Underground Requirement Area* shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

2.1.51. *Utility pole* means a pole that provides: (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

2.1.52. *Wireless service* means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

2.1.53. *Wireless service provider* means a person that provides wireless service to the public.

2.1.54. *Wireless facilities* mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284

2.2 When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.

2.3. The word “shall” is always mandatory and not merely permissive.

2.4. “Include” and “including,” and words of similar import, shall be deemed to be followed by the words “without limitation.”

### **ARTICLE 3. CHAPTER 284 GRANT AND SCOPE OF AUTHORIZATION TO COLLOCATE NETWORK NODES ON SERVICE POLES.**

#### **3.1. CITY GRANT OF PERMISSION IN ACCORDANCE WITH CHAPTER 284.**

3.1.1. Only to the extent required by Chapter 284, Sec. 284.056 and Sec. 284.101 (a) (3) does the City grant Licensee the right to enter the Public Right-of-Way and to

Collocate Network Node facilities on Service Poles in the Public Right-of-Way, subject to the terms of this Agreement and Chapter 284.

- 3.1.2. This Agreement does not confer any other rights not described herein nor does it permit Licensee or third parties to use the Public Right-of-Way or Service Poles for purposes not specified in this Agreement, except to the extent otherwise expressly allowed by law.
- 3.1.3. This Agreement does not authorize the Licensee to install equipment and facilities associated with or for Macro Towers in the Public Right-of-Way.
- 3.1.4. Network Provider must have an existing Agreement with the City to apply for and be granted a Permit to use or to in anyway Collocate Network Node facilities on Service Poles.

3.2. SCOPE OF AGREEMENT

- 3.2.1. This Agreement is not exclusive and the City reserves the right to grant permission to enter the Public Right-of-Way and to use Service Poles in the Public Right-of-Way to Collocate Network Node facilities to other eligible and qualified Other Parties under Chapter 284.
- 3.2.2. Except as expressly provided herein, this Agreement does not grant Licensee the authority to grant any rights under this Agreement to any Other Party without the written consent of the City in a separate agreement in accordance with Chapter 284.
- 3.2.3. This Agreement only authorizes Collocation of Network Node on Service Poles in the Public Right-of-Way and does not confer any rights or permission to install or otherwise collocate Network Node on any other Poles or to place such Network Node in the Public Right-of-Way.
- 3.2.4. This Agreement does not grant to the Licensee an interest in any property.

3.3. UNAUTHORIZED NETWORK NODE ON SERVICE POLES.

- 3.3.1. The City Manager shall deem as unauthorized any type of Network Node attached or Collocated to a Service Pole if there is no Agreement, even if it was inadvertently and incorrectly permitted. The City Manager at his or her sole discretion may, upon 30 days' written notice, remove or require the Licensee to remove unauthorized Network Node at Licensee's expense without any liability to the City. The City will invoice and Licensee shall reimburse the City within 30 days of receipt of the invoice for the City's cost of removal of unauthorized Network Node.
- 3.3.2. Any Modification to a Network Node must be approved by the City Public Works Department except for those modifications, repairs, routine maintenance or related work that do not require a permit under Chapter 284, Sec. 284.157 (a) and (b), however even for those modifications, repairs, routine maintenance or related work that do not require a permit under Chapter 284, Sec. 284.157 (a) and (b),

advance notice shall be given via written letter (which may be delivered by hand or other method) or an acknowledged email transmission by the Network Provider to the City contact listed in Article I shall be provided to the City as allowed by Chapter 284, Sec. 284.157 (d) (1)- (3).

#### **ARTICLE 4. APPLICATION FOR A PERMIT TO COLLOCATE ON A SERVICE POLE.**

##### **4.1. APPLICATION FOR A PERMIT TO COLLOCATION A NETWORK NODE ON A SERVICE POLE.**

4.1.1. *Application for Collocation on Service Pole Permit.* Prior to Collocation of a Network Node on a Service Pole or installation of the related ground equipment adjacent to a Service Pole, Licensee shall complete and submit to the City Public Works Department the Application for Collocation of a Network Node on a Service Pole Location, and the following:

4.1.1.1. *Fee for Application for Collocation on Service Pole Permit Due with Application.*

(a) City will charge an application and permit fee for the Application for Collocation of a Network Node on a Service Pole Location in accordance with Chapter 284, Sec. 284.156 and as listed in the City's current fee schedule.

(b) Licensee shall pay the City the Ch. 284, Sec. 284.156 application and permit fees at the time of the submittal of the application for the permits. Except as provided for in this Agreement, application and permit fees are non-refundable.

4.1.1.2. Documents necessary for the review of the Application for Collocation of a Network Node on a Service Pole Location and as reasonably requested by the City's Public Works Department as may be requested by Chapter 284, include but are not limited to:

4.1.1.2.1. Map showing exact intended location of the Network Node and its distance from a designated Historic Landmark, Park, or School, Utility Pole, Node Support Pole, and other Network Nodes on a Service Pole, if any, and depicting the sidewalks, and ramps onto sidewalks required by Applicable Codes, TAS, or other law, including the Americans with Disabilities Act, and paved street surface and utility easements;

4.1.1.2.2. Representative drawings or pictures of the intended Network Node as intended to be Collocated on the Service pole; and

4.1.1.2.3. Engineering and construction plans and drawings related to the Collocation of the Network Node on the Service Pole, including where

the proposed Transport Facilities will be connected to the Network Node as electrical power connections.

4.1.1.3. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108. An application will not be accepted as complete or will be deemed to have not been accepted without the appropriate engineering analysis.

4.1.1.4. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4.1.1.5. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- i. Be encased in a separate conduit than the traffic light electronics;
- ii. Have a separate electric power connection than the traffic signal structure; and
- iii. Have a separate access point than the traffic signal structure.
- iv. Shall not alter, puncture or drill into the City structure.

4.1.1.6. *Installations on Street signage:* Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electronics shall:

- i. Be encased in a separate conduit than any City signage electronics;
- ii. Have a separate electric power connection than the signage structure;
- iii. Have a separate access point than the signage structure;
- iv. Will not alter, puncture or drill into the City structure.

4.1.2. Network Provider shall comply with any additional requirements of the City's Public Right-of-Way Management Ordinance and Design Manual or directions of the City Manager concerning collocating its Network Nodes on any Service Pole. Compliance is to be with the City's Public Right-of-Way Management Ordinance and

Design Manual in effect at the time of the Application for Collocation of a Network Node on a Service Pole Location.

4.1.3. If the applicant is not the same as the Licensee listed on the Application for Collocation of a Network Node on a Service Pole or installation of the related ground equipment, the Licensee shall sign the application or provide a letter of agency satisfactory to the City Attorney and is presumed to be the owner of the Network Node, and Ground Equipment and shall be fully responsible for them and the Rental Fees as set forth as the Licensee and Network Provider in this Agreement.

4.2. **REVIEW PROCESS FOR AN APPLICATION FOR COLLOCATION OF A NETWORK NODE ON A SERVICE POLE PERMIT. (CH. 284, SEC. 284.154)**

4.2.1. The Public Works Department shall review an Application for Collocation of a Network Node on a Service Pole or installation of the related ground equipment on a Service Pole for completeness and act in the time allowed, with notifications to the Licensee, as prescribed in Chapter 284, Sec. 284.154.

4.2.2. The Public Works Department shall review the Application for Collocation of a Network Node on a Service Pole to determine:

4.2.2.1. If the requested site has already been approved as a Location for Other Parties, in which instance that Location shall no longer be available and application shall be denied;

4.2.2.2. If all the required documentation has been provided;

4.2.2.3. Compliance with the requirements of the City's Public Right-of-Way Management Ordinance and Design Manual and this Agreement;

4.2.2.4. That written permission has been obtained by applicable parties as required by this Agreement; and

4.2.2.5. Compliance with applicable construction, engineering, design specifications, Applicable Codes and laws, and other applicable requirements, including the Americans with Disabilities Act.

4.2.3. The City Engineer shall deny a requested Application for Collocation of a Network Node on a Service Pole if the Licensee's application is not in compliance with the City's Public Right-of-Way Management Ordinance and Design Manual and this Agreement.

4.2.4. Licensee shall not install a Network Node without the requisite Permit(s).

4.2.5. The Public Works Department shall forward to the City Manager each approved GIS or Street Address and related information in the Application for Collocation of a Network Node on a Service Pole when a Permit is approved.

**ARTICLE 5. CHAPTER 284 RENTAL FEES AND OTHER PAYMENTS**

5.1. **NETWORK NODE SITE ANNUAL RENTAL RATE. (CH. 284, SEC. 284.053)**

5.1.1 *Annual Network Node Rate.* Licensee shall pay the City annually the current per Network Node site rate in accordance with Ch. 284., Sec. 284.053 (a) the current Network Node Public Right-of-Way Rate for each Location for which Licensee has obtained Permit(s) regardless of whether or not a Licensee installs Network Nodes in the Public Right-of-Way. Except as provided for in this Agreement, the annual Network Node Public Right-of-Way Rate is non-refundable. The current rates will be those published in the City's Fee Schedule.

5.1.2. *Initial Annual Network Node Rate Pro Rated.* The annual Network Node Public Right-of-Way Rate payment for the first year at any Location ("Initial Annual Network Node Payment") begins accruing when the permit is issued and is due 30 days after Licensee obtains a Permit to install or collocate a Network Node at the Location. The Initial Annual Network Node Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date.

Commented [A1]: Legislation doesn't require pro-rating...do we need to do this?

5.1.3. *Subsequent Years Annual Network Node Rate Due Date.* The annual Network Node Public Right-of-Way Rate for every year after the Initial Annual Network Node Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

5.1.4 *Annual Network Node Rate Adjustment.* Pursuant to Ch. 284, Sec. 284.054 and the City's Right of Way Management Ordinance, on or about each October of each year after October 2017 the City intends to adjust the annual Network Node Public Right-of-Way Rate. The City shall provide written notice to each Network Provider of the new rate, and the rate shall apply to the first payment due to the municipality on or after the 60th day following that notice. It is the City's intent that the new adjusted Network Node Public Right-of-Way Rate be effective each year by December 31 in order to apply and begin accruing January 1 of the year following the Notice of the adjustment in the Network Node Site Public Right-of-Way Rate.

## 5.2. COLLOCATION ATTACHMENT ON SERVICE POLE FEE. (CH. 284, SEC. 284.056)

5.2.1 *Annual Collocation on Service Pole Attachment fee.* Licensee shall pay the City annually a fee for each Network Node Permitted to be Collocated on Service Pole in accordance with Ch. 284., Sec. 284.056 for each Location for which Licensee has obtained Permit(s) to collocate a Network Node on a Service Pole regardless of whether or not a Licensee collocates a Network Node on a Service Pole. Except as provided for in this Agreement, this fee is non-refundable.

5.2.2. *Initial Annual Collocation on Service Pole Attachment Fee Pro Rated.* The annual collocation on Service Pole attachment fee payment for the first year at any Location ("Initial Annual Collocation on Service Pole Attachment Fee Payment") begins accruing when the permit is issued and is due 30 days after Licensee obtains a Permit to install or collocate a Network Node at the Location. The Initial Annual Collocation on Service Pole Attachment Fee Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date.

Commented [A2]: Same comment

5.2.3. *Subsequent Years Annual Collocation on Service Pole Attachment Fee Due Date.* The annual Collocation on Service Pole attachment fee for every year after the Initial

Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

5.3. MONTHLY TRANSPORT FACILITY FEE. (CH. 284, SEC. 284.055)

5.3.1 *Monthly Transport Facility Fee.* To the extent Network Provider has Transport Facilities Permitted from the Network Nodes in the Public Right-of-Way it shall pay the City in accordance with the Ch. 284, Sec. 284.055 (b) a monthly Transport Facilities fee on a quarterly basis as set out below in Sec. 5.3.3, which begins accruing when the permit is issued and is on the same quarterly access line schedule for quarterly calendar period covered and quarterly payment schedule as in Chapter 283 of the Local Gov. Code. Except as provided for in this Agreement, the Monthly Transport Facility Fee is non-refundable

5.3.2 Licensee may either:

(a) In accordance with Ch. 284., Sec. 284.055 (a) (1), install its own Transport Facilities, subject to Transport Facility fee payments as set out in Subsection 5.3.3, below; or

(b) In accordance with Ch. 284., Sec. 284.055 (a) (2) obtain transport service from a person that is paying the City fees to occupy the Public Right-of-Way that are the equivalent of not less than \$28 per Network node site per month, for which the City shall require independent reasonable verification that the provider of Transport Facility service to the Network Provider has paid the City in the corresponding calendar quarterly time period a payment in an amount that is equivalent to or greater than the Transport Facility fee due for that quarterly payment for the same and corresponding calendar quarter period that the Network Provider would have been due to pay the city for the calendar quarter as set out in Subsection 5.3.4., below.

5.3.3. *Monthly Transport Facility Fee payment.* In accordance with Ch. 284., Sec. 284.055 (b), the Network Provider shall pay to the City a fee as listed in the City's Fee Schedule multiplied by the number of the Network Provider's Network Nodes located in the Public Right-of-Way for which the installed Transport Facilities provide backhaul unless or until the time the Network Provider's payment of municipal rights-of-way fees for use of the Public Right-of-Ways to the City from that same and corresponding calendar quarter period that exceeds its monthly aggregate per-node compensation to the City due for that calendar quarter, subject to the verification as set out in Subsection 5.3.4., below.

5.3.3.1. *Quarterly Due dates of Transport Facility Fee payments.* The Monthly Transport Facility Fee begins accruing when the permit is issued and is on the same quarterly access line schedule for quarterly calendar period covered and quarterly payment schedule as in Chapter 283 of the Local Gov. Code. The Network Provider shall pay the City the Monthly Transport Facility Fee payment on a quarterly calendar year basis for each calendar quarter, 45 days after the end of the preceding calendar quarter the monthly Public Right-of-Way rate for Transport Facilities.

5.3.4 *Alternative Quarterly True-up Verification Report.* If Network Provider utilizes the Ch. 284., Sec. 284.055 (a) (2) option to obtain transport service from a person that is paying

municipal fees to occupy the Public Right-of-Way or utilizes the Ch. 284, Sec. 284.055 (a) (1), option and install its own Transport Facilities and asserts that it has paid the City in an amount that is equivalent to or greater than the Transport Facility fee due for that quarterly period for the same and corresponding calendar quarter period that would have been due from the Network Provider to the City for the calendar quarter then:

(a) 45 days after the end of each calendar quarter the Network Provider shall provide to the City a Quarterly True-up Verification Report documenting those equivalent or greater payments to the City.

(b) This verification report is to allow the City to verify that the corresponding immediately preceding past quarterly payments due the City for Transfer Facilities for each Network Node Transfer Facility that the City has received from the Network Provider or from the Network Provider's provider of Transport Facilities a payment to the City for that corresponding prior calendar quarterly period's is equal to or exceeds the monthly aggregate per-node Transfer Facility compensation due to the City under this Agreement and Ch. 284., Sec. 284.055 (b) (2) for that same calendar quarter period.

(c) The Quarterly True-up Verification Report shall be provided 45 days after the end of each calendar quarter that an actual and full payment is not made from the Network Provider to the City for the Transfer Facilities Monthly Transport Facility Fee payment.

(d) In the event the payment to the City that is asserted to be equal to or exceeding the monthly aggregate per-node Transfer Facility compensation due to the City under this Agreement and Ch. 284., Sec. 284.055 was by a different named entity than the Network Provider, the Network Provider bears the burden to establish that the entity paying the City and the Network Provider is an Affiliate and that they are one and the same for purposes of a Chapter 284 Transfer Facility fee true-up credit against the Monthly Transport Facility Fee.

5.3.5. This Transport Facility fee is in addition to any annual Network Node Public Right-of-Way Rate payment required by Ch. 284, Section 284.053

#### 5.4. APPLICATION FEES. (CH. 284, SEC. 284.156)

5.4.1 *Application and Permit Fees.* Licensee shall pay the City the Ch. 284, Sec. 284.156, and the City's Fee Schedule, application and permit fees contemporaneously with the submittal of the application for the permits. Except as provided for in this Agreement, application and permit fees are non-refundable.

#### 5.5. OTHER PAYMENTS

The Network Node Public Right-of-Way Rate, the collocation on Service Pole attachment fee, the Transport Facility fee, (collectively sometimes referred to as "Rental fees") and the application and permit fees payable under Ch. 284, shall be exclusive of, and in addition to all ad valorem taxes, special assessments for municipal improvements, and other lawful obligations of the Licensee to the City.



#### 5.6. NON-FUNCTIONING NETWORK NODES

Licensee shall continue to pay Rental Fees for Network Nodes attached to Service Poles that are no longer in service or operational if the Network Nodes attached to Service Poles occupy the Public Right-of-Way.

#### 5.7. PAYMENT

5.7.1. Rental Fees shall be as due as set out in Section 5.1-5.4 above.

5.7.2. Rental Fee and other payments shall be payable by ACH direct deposit or check payable to the City of Schertz and sent to the following address:

ATTN: Public Works Director  
City of Schertz  
10 Commercial Place, Bldg 2  
Schertz, TX 78154

#### 5.8. REIMBURSEMENT

When under the terms of this Agreement, the City at its own expense has removed or remediated Licensee's Network Nodes attached to Service Poles or Licensee is required to reimburse the City, the Licensee shall remit payment to the City to the address listed in Article 5.7 within 30 days of the date of the invoice for removal, remediation, or requirement.

#### 5.9. PAYMENT LIMITS

Following removal of any Network Nodes attached to Service Poles consistent with the terms of this Agreement, and payment for any damages due to the installation, maintenance or removal of the Network Node, or any other amounts due the City under this Agreement there will be no compensation due, including any Rental Fees, to the City by Licensee for such Network Nodes attached to Service Poles except that the City shall not issue any refunds for any amounts already paid by Licensee for Network Nodes attached to Service Poles that have been removed.

Notwithstanding the foregoing, if Licensee is required by the City to remove a Network Node(s) attached to Service Pole(s) and such removal is not the result of Licensee's failure to comply with this Agreement, City may reimburse Licensee the Rental Fee for such Network Nodes attached to Service Poles pro-rated monthly for the remainder of the calendar year.

#### 5.10. COMPLIANCE REVIEW

The City may, at its discretion, upon no less than 30 days prior written notice, require that the Licensee produce its records related to this Agreement for review by the City Manager or his designee to ascertain the correctness of the information provided under Article 5 of this Agreement. If the City Manager identifies, as a result of a review of the information provided pursuant to Article 5 of this Agreement amounts owed by the Licensee from prior periods, the Licensee shall pay the amount identified within 30 days of the date of the invoice. If the review determines that payment of the Rental Fee was not made in accordance with the terms of this

Agreement and that such payment represents an overpayment of any amount, City will credit such overpayment against Licensee's future obligations to City under this Agreement.

5.11. PERMITS CONDITIONED ON PAYMENTS BEING CURRENT.

Permits are expressly conditioned on Rental payments being current or the permit is void after 30 days' notice of delinquency and remain void until payment in full, except for those amounts disputed in good faith, for which reasonable and detailed documentation has been submitted to the City supporting such disputed amounts and is still pending City review.

**ARTICLE 6. DESIGN MANUAL, PUBLIC RIGHT-OF-WAY MANAGEMENT ORD.  
COMPLIANCE AND RELATED REQUIREMENTS**

6.1. AESTHETIC REQUIREMENTS

6.1.1. Network Provider shall comply with the requirements of the City's Public Right-of-Way Management Ordinance and Design Manual concerning Collocating its Network Nodes on any Service Pole, as the City's Public Right-of-Way Management Ordinance and Design Manual are published and amended from time to time. Compliance is to be with the City's Public Right-of-Way Management Ordinance and Design Manual in effect at the time of the Application for Collocation of a Network Node on a Service Pole Location.

6.1.2. To the extent not in conflict with the City's Public Right-of-Way Management Ordinance, Design Manual or Chapter 284 the Network Node on the Service Pole shall be concealed or enclosed as much as possible in an equipment box, cabinet or other unit that may include ventilation openings; external cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or are visually minimized to the extent possible.

6.2. INSTALLATION

To the extent not in conflict with the City's Public Right-of-Way Management Ordinance or Design Manual or Chapter 284 the Network Node on the Service Pole Licensee shall, at its own cost and expense, install the Network Nodes attached to Service Poles in a good and workmanlike manner and in accordance with the requirements promulgated by the City Engineer, as such may be amended from time to time. Licensee's work shall be subject to the regulation, control and direction of the City Engineer. All work done in connection with the installation, operation, maintenance, repair, and/or replacement of the Network Nodes attached to Service Poles shall be in compliance with all Applicable Codes and Laws.

6.3. INSPECTIONS

6.3.1. The City Public Works Department may perform visual inspections of any Network Nodes attached to Service Poles located in the Public Right-of-Way as the City Public Works Department deems appropriate without notice. If the inspection requires physical contact with the Network Node, the City Public Works Department shall provide written notice to the Licensee within five business days of the planned inspection. Licensee may have a representative present during such inspection.

- 6.3.2. In the event of an emergency situation, the City may, but is not required to, notify Licensee of an inspection. The City may take action necessary to remediate the emergency situation and the City Engineer shall notify Licensee as soon as practically possible after remediation is complete.

6.4. PLACEMENT

Network Provider shall comply with the requirements of the City's Public Right-of-Way Management Ordinance and Design Manual concerning Collocating its Network Nodes on any Service Pole, as the City's Public Right-of-Way Management Ordinance and Design Manual are published and amended from time to time. Compliance is to be with the City's Public Right-of-Way Management Ordinance and Design Manual in effect at the time of the Application for Collocation of a Network Node on a Service Pole Location.

6.5. ELECTRICAL SUPPLY

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance and Design Manual concerning electrical connections to its Network Nodes on any Service Pole as published and amended from time to time, but as in effect at the time of the application for a permit. Licensee shall be responsible for obtaining any required electrical power service to the Network Nodes. The City shall not be liable to the Licensee for any stoppages or shortages of electrical power furnished to the Network Nodes, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Licensee of the structure, or for any other cause beyond the control of the City. Licensee shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.

6.6. TRANSPORT FACILITY FIBER CONNECTION

Licensee shall be responsible for obtaining and properly permitting Transport Facilities for the Network Nodes access and connection to fiber optic lines or other backhaul solutions that may be required for its Network Nodes.

6.7. GENERATORS

Licensee shall not allow or install generators or back-up generators in the Public Right-of-Way.

6.8. EQUIPMENT DIMENSIONS

Licensee's Network Nodes shall strictly conform to the size limits in Chapter 284 for its Network Nodes and ground equipment and shall be no greater than those sizes, but may be less than the sizes set out in Chapter 284.

6.9. TREE MAINTENANCE

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance and Design Manual concerning tree maintenance.

6.10. SIGNAGE

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance and Design Manual concerning signage on the Network Node and any ground equipment.

6.11. REPAIR

To the extent not in conflict with the City's Public Right-of-Way Management Ordinance or Design Manual whenever the installation, placement, Collocation, attachment, repair, removal, operation, use, or relocation of the Network Node, or ground equipment, or any portion thereof is required or permitted under this Agreement, and such installation, placement, Collocation, attachment, repair, removal, operation, use, or relocation causes any property of the City or any third party to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Law, Applicable Code, rule, or regulation, Licensee, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Licensee does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to Licensee or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the reasonable and actual costs incurred by the City. Licensee shall reimburse the City for the costs in accordance with Article 5.8 of this Agreement.

6.12. GRAFFITI ABATEMENT

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance and Design Manual concerning graffiti on any of its Network Node or ground equipment.

**ARTICLE 7. RADIO INTERFERENCE BY NETWORK NODE PROHIBITED. (ch. 284, Sec. 284.304)**

7.1. NO LIABILITY

- 7.1.1. The City shall not be liable to Licensee for any damage caused by other Licensees with Network Node in close proximity of the Service Pole.
- 7.1.2. The City shall not be liable to Licensee by reason of inconvenience, annoyance or injury to the Network Node, or ground equipment, or activities conducted by Licensee therefrom, arising from the necessity of repairing any portion of the Public Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Public Right-of-Way, or in, or to, its fixtures, appurtenances or equipment. The City will use reasonable efforts not to cause material interference to Licensee's operation of its Network Node.

7.2. NO INTERFERENCE

- 7.2.1. Licensee's Network Node shall strictly comply with Chapter 284, Sec. 284.304 and not cause any harmful radio frequency interference to a Federal Communications Commission-authorized mobile telecommunications operation of any municipality operating at the time the Network Node was initially installed or constructed. On written notice, the Network Provider shall take all steps reasonably necessary to remedy any harmful interference.

72.2. To the extent not inconsistent with Chap. 284, Sec. 284.304:

The Newark Provider's Network Node collocated on Service Poles shall not cause harmful interference to the City's public service radio frequency, wireless network, or communications operations ("City Operations") and Other Parties' Network Nodes or similar third-party equipment in the Public Right-of-Way or adjacent City property ("Protected Equipment"). If Licensee's Network Node interferes with the City's Operations, then Licensee shall immediately cease operation of the Network Node causing said interference upon receiving notice from the City and refrain from operating until Licensee has eliminated the interference. If after notice Licensee continues to operate Network Node that cause interference with City Operations, such Network Node may be deemed unauthorized and subject to the provisions of this Agreement. If Licensee's Network Node interferes with Protected Equipment, then Licensee shall take the steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the City. If the Licensee is unable to resolve the interference issue within this timeframe, it will voluntarily power down the Network Node causing the interference, except for intermittent testing until such time as the interference is remedied

7.2.2. Following installation or Modification of a Network Node, the City Engineer may require Licensee to test the Network Node's radio frequency and other functions to confirm that it does not interfere with the City's Operations or Protected Equipment.

## **ARTICLE 8. ABANDONMENT, RELOCATION AND REMOVAL**

### **8.1. ABANDONMENT OF OBSOLETE NETWORK NODE**

Network Provider shall comply with the requirements of the City's Public Right-of-Way Management Ordinance and Design Manual concerning collocating its Network Nodes on any Service Pole, as the City's Public Right-of-Way Management Ordinance and Design Manual are that are published and amended from time to time. Compliance is to be with the City's Public Right-of-Way Management Ordinance and Design Manual in effect at the time of the Application for Collocation of a Network Node on a Service Pole Location.

To the extent not in conflict with the City's Public Right-of-Way Management Ordinance or Design Manual Licensee shall remove Network Nodes and ground equipment when such facilities are Abandoned regardless of whether it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of it being Abandoned or within 90 days of receipt of written notice from the City. When Licensee removes or abandons permanent structures in the Public Right-of-Way, the Licensee shall notify the City Engineer and City Manager in writing of such removal or abandonment and shall file with the City Engineer and City Manager the location and description of Network Nodes and ground equipment removed or abandoned. The City Engineer may require the Licensee to complete additional remedial measures necessary for public safety and the integrity of the Public Right-of-Way.

## 8.2. REMOVAL REQUIRED BY CITY

- 8.2.1. To the extent not in conflict with the City's Public Right-of-Way Management Ordinance, Design Manual or Chapter 284, Sec. 284.303, Licensee shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Network Nodes and ground equipment within the time frame and in the manner required by the City Public Works Department if the City Public Works Department reasonably determines that the disconnection, removal, or relocation of any part of Network Nodes and ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) Network Nodes and ground equipment or portion thereof, is adversely affecting proper operation of streetlights, or City property, or (c) Licensee loses or fails to obtain all applicable licenses, Permits, and certifications required by Law for its Network Nodes and ground equipment, or use of any Location under this Agreement. If the City Public Works Department reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Network Nodes and ground equipment at the Licensee's sole cost and expense.
- 8.2.2. The City Public Works Department shall provide 90 days written notice to the Licensee before removing a Network Nodes and ground equipment under this Section 8.2, unless there is imminent danger to the public health, safety, and welfare.
- 8.2.3. Licensee shall reimburse City for the City's actual cost of removal and any storage or associated costs of its Network Nodes and ground equipment in accordance with this Agreement within 30 days of receiving the invoice from the City.

## 8.3. REMOVAL OR RELOCATION BY LICENSEE

- 8.3.1. If the Licensee removes or relocates a Network Nodes and ground equipment at its own discretion, it shall notify the City Public Works Department and City Manager in writing not less than 10 business days prior to removal or relocation. Licensee shall obtain all permits required for relocation or removal of its Network Nodes and ground equipment prior to relocation or removal.
- 8.3.2. Except as otherwise provided in this Agreement, the City shall not issue any refunds for any amounts paid by Licensee for Network Nodes and ground equipment that have been removed.

## 8.4. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT

- 8.4.1. To the extent not in conflict with the City's Public Right-of-Way Management Ordinance or Design Manual and Chapter 284, Sec. 284.303, Licensee understands and acknowledges that the City may require Licensee to remove or relocate its Network Nodes and ground equipment, or any portion thereof from the Public Right-of-Way, and Licensee shall at the City Public Works Department's direction remove or relocate the same at Licensee's sole cost and expense, whenever the City Engineer reasonably determines that the relocation

or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project that enhances the Public Right-of-Way for use of the traveling public.

- 8.4.2. If Licensee fails to remove or relocate the Network Nodes and ground equipment, or portion thereof as requested by the City Public Works Department within 90 days of Licensee's receipt of the request, then the City shall be entitled to remove the Network Nodes and ground equipment or portion thereof at Licensee's sole cost and expense, without further notice to Licensee, and Licensee shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, storage expenses) of the Network Nodes and ground equipment, or portion thereof.

8.5. REMOVAL REQUIRED AFTER TERMINATION OR EXPIRATION OF LICENSE

Within 30 calendar days after termination or expiration of this Agreement, Licensee shall commence removal of all of Licensee's Network Nodes and ground equipment from all Service Pole(s) in the Public Right-of-Way and peaceably surrender the Public Right-of-Way to City in the same condition the Public Right-of-Way was in on the Effective Date. Removal of all the Licensee's Network Nodes and ground equipment under this section must be completed within 90 days. If Licensee fails to begin removal of the Network Nodes and ground equipment on or before the 30th day after the Agreement expires or terminates or fails to complete removal within 90 days, the City may remove, store, or dispose of any remaining portion of the Network Nodes and ground equipment in any manner the City Public Works Department deems appropriate. Licensee shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage fees).

8.6. REMOVAL REQUIRED AFTER REVOCATION

Within 30 days after the date of the notice of revocation of a Permit for a Location, Licensee shall commence removal of the Network Nodes and ground equipment from the Public Right-of-Way and peaceably surrender the Public Right-of-Way to City in the same condition the Public Right-of-Way was in on the Effective Date. If Licensee fails to complete removal within 90 days, the City may remove, store, or dispose of any remaining portion of the Network Nodes and ground equipment in any manner the City Public Works Department deems appropriate. Licensee shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage fees).

8.7. OWNERSHIP

No part of a Network Node constructed, erected or placed on the Public Right-of-Way by Licensee will become, or be considered by the City as being affixed to or a part of, a Service Pole or of the Public Right-of-Way. All portions of the Network Node constructed, modified, erected or placed by Licensee on the Public Right-of-Way will be and remains the property of Licensee and may be removed by Licensee at any time during or after the Term.

8.8. RESTORATION

Licensee shall repair any damage to the Public Right-of-Way, and the property of any third party resulting from Licensee's removal activities (or any other of Licensee's activities hereunder) within 10 days following the date of such removal or relocation, at Licensee's sole cost and expense, to include restoration of the Public Right-of-Way and property to substantially the same condition as it was immediately before the Effective Date, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

8.9. LICENSEE RESPONSIBLE

Licensee shall be responsible and liable for the acts and omissions of Licensee's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sublicensees, sublessees, and subcontractors in connection with the performance of this Agreement, as if such acts or omissions were Licensee's acts or omissions.

8.10. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE

The City has appropriated \$0 under this Agreement to pay for the cost of any removal or storage of Network Node, as authorized under this Article, and no other funds are allocated in connection with the performance of this Agreement.

**ARTICLE 9. ENVIRONMENTAL LAW REQUIREMENTS**

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance concerning environmental law requirements on any of its Network Node or ground equipment.

**ARTICLE 10. SECURITY**

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance concerning security requirements on any of its Network Node or ground equipment.

**ARTICLE 11. INDEMNIFICATION, INSURANCE AND LIABILITY**

11.1 *Indemnity.* Network Provider shall comply with the City's Public Right-of-Way Management Ordinance and Chapter 284, Sec. 284.302 concerning on indemnification requirements on any of its Network Node or ground equipment.

11.2 *Insurance.* Network Provider shall comply with the City's Public Right-of-Way Management Ordinance concerning insurance requirements on any of its Network Node or ground equipment.

11.3 *Liability.* Network Provider shall be responsible for any damages to any party that occur due to the installation, maintenance or failure to maintain, the removal or failure to remove Network Nodes for which it would be liable under Law.

**ARTICLE 12. TERM AND TERMINATION**

12.1. TERM



- 12.1.1. This Agreement is effective on the Effective Date and unless sooner terminated under other provisions of this Agreement, will remain in effect until December 31, 2025 (“Initial Term”).

12.2. RENEWALS

Upon expiration of the Initial Term, this Agreement will automatically renew for up to two (2) successive five (5) year terms (each a “Renewal Term”) on the same terms and conditions, unless either the City or Licensee chooses not to renew. If either the City or Licensee chooses not to renew this Agreement, the City Manager shall notify the Licensee or the Licensee shall notify the City Manager of non-renewal at least 90 days before the expiration of the then-current term.

12.3. TERMINATION FOR CAUSE BY CITY

- 12.3.1. If Licensee defaults under this Agreement, the City may terminate this Agreement subject to Licensee’s ability to cure such defaults below. The City’s right to terminate this Agreement for Licensee’s default is cumulative of all its rights and remedies which exist now or in the future. Default by Licensee includes, but is not limited to:
- 12.3.1.1. Failure of the Licensee to comply with any material term of this Agreement;
  - 12.3.1.2. Licensee becomes insolvent.
  - 12.3.1.3. The Licensee’s failure to obtain all licenses, permits, and certification required by the City under this Agreement and pay all fees associated therewith after the City has notified the Licensee that licenses, permits, and certifications must be obtained to work in the Public Right-of-Way;
  - 12.3.1.4. All or a substantial part of Licensee’s assets are assigned for the benefit of its creditors;
  - 12.3.1.5. A receiver or trustee is appointed for Licensee; or
  - 12.4.1.6. Licensee fails to apply for permits to Collocate on Service Poles in the Public Right-of-Way within 1 year of the Effective Date of this Agreement.
- 12.3.2. If a default occurs, the City Manager shall deliver a written notice to Licensee describing the default and the termination date. If the City Manager sends a default notice, the Licensee shall have 60 days from the receipt of such notice to cure the default (unless the nature of the event takes longer to cure and the Licensee commences a cure within such 60-day period and thereafter diligently pursues it but will not exceed 180 days unless agreed to by the City Manager which agreement will not be unreasonably withheld). If Licensee cures the default before the proposed termination date, the proposed termination is ineffective.
- 12.3.3. If the default is not cured in the time and manner set out above or by the City Manager, then the City Manager may immediately terminate this Agreement by notifying Licensee in writing of such termination. After receiving the notice, Licensee shall, immediately cease operations and remove Network Node from

the Public Right-of-Way in accordance with the Sections 8.5 and 8.6 of this Agreement, and any payment due shall be remitted by Licensee within 30 days of the receipt of the notice to the address in the Section 1.1 of this Agreement.

12.4. **TERMINATION BY LICENSEE**

- 12.4.1. The Licensee may terminate this Agreement at any time without cause by giving 30 days advance written notice to the City Manager.
- 12.4.2. If the Licensee does not remove all Network Node from the Public Right-of-Way within the time period required by Section 8.5 of this Agreement, the Network Node may be removed by the City, subject to reimbursement for its cost from the Network provider as allowed by the Agreement.

12.5. **AUTOMATIC TERMINATION.**

If Chapter 284 of the Local Government Code, or any part thereof is at any time, in full or in part, revoked, found to be unconstitutional, struck down, preempted or otherwise becomes void or invalid, then this License shall automatically terminate, unless an extension is granted by the City. This section shall constitute Notice that in such case, all Network Nodes are to be removed within ninety (90) days from the event that affect Chapter 284. The Parties agree they will negotiate in good faith to assure an ease of transitions as to those parts of Chapter 284 that have been adjudicated as unenforceable, as well as continued compliance with those parts that may remain enforceable, if any.

**ARTICLE 13.      TRANSFER OF AUTHORITY**

13.1. **ASSIGNMENT**

- 13.1.1. Licensee may not assign, delegate, transfer, or sell all or any portion of its rights, privileges and obligations under this Agreement without written notice to and the prior written consent of the City Manager, which consent will not be unreasonably withheld. No assignment in law or otherwise shall be effective until the assignee has filed with the City Manager an instrument, duly executed, reciting the fact of such assignment, accepting the terms hereof, and agreeing to comply with all of the provisions hereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of this Agreement for the purposes of this Article.
- 13.1.2. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in this Article. This Agreement does not create any personal liability on the part of any officer or agent of the City.
- 13.1.3. Notwithstanding anything to the contrary contained in this Agreement, Licensee will, whenever in its sole discretion it is required or appropriate for the operation of its business, have the right, without notice to or consent of City, City Manager, or any other party, to assign all or any portion of its rights under this Agreement in whole or in part, to (a) any Affiliates as long as such entity has expertise in the operation of Network Node, or provision of Wireless Services; (b) any entity with

which the Licensee or an Affiliate of the Licensee shares joint ownership of the Network Nodes and ground equipment ; or (c) any entity that is a holder of a then-current Agreement. The Licensee shall give written notice to the City Manager within thirty (30) days of such assignment.

#### **13.2. BUSINESS STRUCTURE AND ASSIGNMENTS**

Nothing in this clause, however, prevents the creation of a security interest in the Network Node facilities as described in the Texas Business & Commerce Code. In the case of such an enforcement of that security interest by the holder of the security interest, as an assignee, Licensee shall immediately furnish to the City Manager with proof of the assignment and the name, telephone number, and address of the assignee and a clear contractual obligation that the assignee shall and does assume all the liabilities and responsibilities of Licensee under this Agreement, including responsibilities for any unpaid past due payments, and current and future payments that may be due the City. Such assignment does not release Licensee of its obligations and payments due or to be due the City, unless there is an express written release agreed to by the City.

### **ARTICLE 14. INVENTORY AND INSPECTIONS.**

#### **14.1. INVENTORY RECORDS**

- 14.1.1. Licensee shall maintain a list of its approved Network Node Locations on Service Poles by GIS location during the Term of this Agreement. Licensee shall provide to the City Manager such list within 30 days upon written request, but no more frequent than once a year after the first year of this agreement.

#### **14.2. INSPECTIONS**

- 14.2.1. City representatives shall have the right to perform, or to have performed, (1) inspections of the records described in 14.1.1 and (2) inspections of all places in the Public Right-of-Way where work is undertaken in connection with this Agreement. Licensee shall keep its records described in 14.1.1 available for this purpose for at least four years after this Agreement terminates or expires. The inspection may be performed by City staff or third-party representatives engaged by the City. This provision does not affect the applicable statute of limitations.
- 14.2.2. In addition to other records or filings required hereunder or by Law, the Licensee shall maintain and provide access to a current map by either paper or electronic means, upon request by the City Manager or City Public Works Department, showing the approximate locations of Network Nodes on Service Poles in the Right-of- Way.
- 14.2.3. The City Manager may reasonably require the keeping of additional records or accounts reasonably necessary to determine the Licensee's compliance with the terms of this Agreement.

#### **14.3. CONFIDENTIAL INFORMATION**

The City Manager shall not disclose any confidential information reproduced for documentation of audit issues unless required by law. If the City receives a request to review or copy confidential information under the Texas Public Information Act or related law (the "Act"), the City shall

comply with the requirements for handling third party information under the Act, including notifying the Licensee that a request to review or copy Confidential Information has been submitted to the City. Confidential information deemed subject to disclosure under the Act by the Attorney General of the State of Texas shall be disclosed.

## **ARTICLE 15. MISCELLANEOUS**

### **15.1. FORCE MAJEURE**

Other than the Licensee's failure to pay amounts due and payable under this Agreement, the Licensee shall not be in default or be subject to sanction under any provision of this Agreement when its performance is prevented by Force Majeure. Force Majeure means an event caused by epidemic; act of God; fire, flood, hurricanes, tornadoes, or other natural disasters; explosions; terrorist acts against the City or Licensee; act of military or superior governmental authority that Licensee is unable to prevent by exercise of reasonable diligence; war; riots; or civil disorder; provided, however, that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the Licensee. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Performance is not excused under this section following the end of the applicable event of Force Majeure. Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Force Majeure does not entitle Licensee to reimbursement of payments.

This relief is not applicable unless the affected party does the following:

- 15.1.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- 15.1.2. provides the other party with prompt written notice of the cause and its anticipated effect.

The City Manager will review claims that a Force Majeure that directly impacts the City or Licensee has occurred and render a written decision within 14 days. The decision of the City Manager is final.

Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Licensee shall employ only fully trained and qualified personnel during a strike.

### **15.2. DISPUTE RESOLUTION**

- 15.2.1. In the event of a dispute between the Parties that arises during the Term of this Agreement, the Parties shall attempt to expeditiously and amicably resolve any dispute through good faith discussions in the ordinary course of business at the level at which the dispute originates.
- 15.2.2. If the Parties are not able to resolve the dispute in the ordinary course of business, the City Manager and representatives of other City departments that are involved in the dispute will meet with Licensee's authorized representative in an attempt to resolve the dispute.

- 15.2.4. Except in emergencies, no lawsuit under or related to this Agreement by one party against the other may be filed until at least meeting has occurred between the City Manager and executives of Network Provider with full authority to resolve the claims in the meeting or that are available contemporaneously with the meeting via live telephonic communications where the parties agree to attempt in good faith to resolve or narrow the issues; and if not resolved, and the parties agree that before initiating litigation, either party shall notify the other party of its intent to sue, and provide a copy of the draft pleading, with supporting facts and legal authorities at least fourteen (14) days before suit is filed.
- 15.2.5. This section does not apply to disputes that involve a question of law.
- 15.2.6. Notwithstanding the existence of any dispute between the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction or unless this Agreement terminates or expires under the terms provided herein.

15.3. ACCEPTANCE AND APPROVAL; CONSENT

An approval by the City Manager, the City Public Works Department, or any other instrumentality of City, of any part of the Licensee's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required by this Agreement or by law. Where this Agreement contains a provision that either party approve or consent to any action of the other party, such approval or consent shall not be unreasonably withheld or delayed. Except as provided for in this Agreement, the City Manager or City Public Works Department are not authorized to vary the terms of this Agreement.

15.4. REPRESENTATIONS AND WARRANTIES

In addition to the representations, warranties, and covenants of the Licensee to the City set forth elsewhere herein, the Licensee represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date and throughout the term of this Agreement:

- 15.4.1. *Organization, Standing and Power.* The Licensee is a Network Provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the State of Texas and in the City. The Licensee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted and to execute, deliver and perform this License and all other agreements entered into or delivered in connection with or as contemplated hereby.
- 15.4.2. *Truthful Statements.* The Licensee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its application for this Agreement were true and correct when made and are true and correct upon execution hereof.

- 15.4.3. *Condition of Public Right-of-Way.* Licensee accepts the Public Right-of-Way where Network Node are authorized to be located “**AS IS**,” without any express or implied warranties of any kind.

15.5. STATEMENT OF ACCEPTANCE

Licensee and City, for themselves, their successors and assigns, hereby accept and agrees to be bound by all terms, conditions and provisions of this Agreement.

15.6. RELATIONSHIP OF THE PARTIES

Licensee shall be responsible and liable for its contractors, subcontractors, and sublicensees. The City has no control or supervisory powers over the manner or method of Licensees’ contractors’ and subcontractors’ performance under this Agreement. All personnel Licensee uses or provides are its employees, contractors, or subcontractors and not the City’s employees, agents, or subcontractors for any purpose whatsoever.

15.7. SEVERABILITY

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

15.8. ENTIRE AGREEMENT

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

15.9. WRITTEN AMENDMENT

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Licensee. The City Manager and City Engineer are only authorized to perform the functions specifically delegated to him or her in this Agreement.

15.10. APPLICABLE LAWS AND VENUE

- 15.10.1. This Agreement is subject to all Applicable Codes and Laws, and all rules and regulations of any regulatory body or officer having jurisdiction, including any lawful court or administrative decisions, judgments or orders that have been fully and finally adjudicated, including any appeals of such decisions judgments, or orders (“Decisions”). This Agreement shall be governed, construed, and enforced according to the laws of the State of Texas, without regard to its choice of law provisions.

If any material provision of this Agreement is superseded or affected by Law, then the Parties shall negotiate in good faith to revise this Agreement.

- 15.10.2. Subject to the Parties’ obligation to submit to the dispute resolution process or mediation as described in this Agreement, Licensee shall submit any and all

litigation and legal proceedings between any of the Licensee and the City to the exclusive jurisdiction of the state or federal courts in the State of Texas and waive any objections or right as to forum non conveniens, lack of personal jurisdiction, or similar grounds. Venue for any litigation relating to this Agreement is Guadalupe County, Texas.

15.11. NOTICES

- 15.11.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I, Section 1.1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.
- 15.11.2. Licensee shall address a copy to the City Public Works Director at the address set out in Article I, Section 1.1 of all notices pertaining to Article 6 and 8 and other notices to the City Public Works Director required under this Agreement.
- 15.11.3. Licensee shall address a copy to the City Attorney at the address set out in Article I, Section 1.1 of all notices pertaining to Article 15 and other notices to the City Attorney required under this Agreement

15.12. CAPTIONS

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

15.13. NON-WAIVER

If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

15.14. ENFORCEMENT

The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Licensee shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Licensee's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

15.15. AMBIGUITIES

If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

15.16. SURVIVAL

Licensee and the City shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond the termination or expiration of this Agreement, including, but not limited to, the provisions regarding warranty, indemnification and confidentiality.

All representations and warranties contained in this Agreement shall survive the term of the Agreement.

15.17. RESERVED

15.18. PARTIES IN INTEREST

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Licensee only.

15.19. REMEDIES CUMULATIVE

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

15.20. LICENSEE DEBT

IF CITY MANAGER BECOMES AWARE THAT LICENSEE OWES ANY DELINQUENT SUM OF MONEY IN AN AMOUNT GREATER THAN \$100.00 TO THE CITY OR ANY AFFILIATE ENTITY FOR AD VALOREM TAXES ON REAL OR PERSONAL PROPERTY LOCATED WITHIN THE BOUNDARIES OF THE CITY ("DEBT"), IT SHALL NOTIFY LICENSEE IN WRITING. IF LICENSEE DOES NOT PAY THE DEBT WITHIN 30 DAYS OF SUCH NOTIFICATION, THE CITY MANAGER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO LICENSEE BY THE CITY UNDER THIS AGREEMENT.

15.21. PARTS INCORPORATED

All of the above-described sections listed in the Table of Contents and the listed exhibits are made a part of and incorporated into this Agreement.

15.22. CONTROLLING PARTS

If a conflict between the sections of the Agreement and any of the exhibits arises, the sections of the Agreement control over the exhibits.



15.23. SIGNATURES

IN WITNESS WHEREOF, the Original Signatories, through their duly authorized officers, have executed this Agreement in multiple counterparts, each of equal force and effect, effective as of the as of the date signed by the **[Drafter's Note: designate one, either the Mayor, City Manager or City Engineer.]**

**LICENSEE/NETWORK PROVIDER:**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Tax Identification No.: \_\_\_\_\_

**ATTEST/SEAL:**

\_\_\_\_\_

Name: \_\_\_\_\_

Date Signed. \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_

City Attorney,

City of \_\_\_\_\_

\_\_\_\_\_

**CITY:**

**CITY OF \_\_\_\_\_,**  
**TEXAS**

Signed by: \_\_\_\_\_

Mayor

Date Signed. \_\_\_\_\_

**ATTEST/SEAL:**

\_\_\_\_\_

City Secretary

**APPROVED:**

\_\_\_\_\_

City Manager

Date Signed. \_\_\_\_\_

<sup>1</sup> The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used and control over any conflicts with the Agreement.

Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized

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national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "*Collocate*" and "*collocation*" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "*Decorative pole*" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "*Design district*" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "*Historic district*" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "*Law*" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "*Macro tower*" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "*Micro network node*" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "*Municipally owned utility pole*" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "*Municipal park*" means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

(12) "*Network node*" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(13) "*Network provider*" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

(i) network nodes; or

(ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "*Node support pole*" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "*Permit*" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "*Pole*" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "*Private easement*" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "*Public right-of-way*" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "*Public right-of-way management ordinance*" means an ordinance that complies with Subchapter C.

(20) "*Public right-of-way rate*" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

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(21) "*Service pole*" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "*Transport facility*" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "*Utility pole*" means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "*Wireless service*" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "*Wireless service provider*" means a person that provides wireless service to the public.