ORDINANCE NO. 17-3204

AN ORDINANCE AMENDING CHAPTER 106 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES" BY REPEALING ARTICLE III, SECTIONS 106-65 THROUGH 106-74 AND BY ENACTING CHAPTER 96 ENTITLED "RIGHT-OF-WAY MANAGEMENT" OF THE CODE OF ORDINANCES OF THE CITY OF BEDFORD, TEXAS ADDING THE FOLLOWING SECTIONS: PROVIDING FOR DEFINITIONS; PROVIDING FOR CRIMINAL PENALTIES; PROVIDING FOR AUTHORIZATION, REGISTRATION, COMPENSATION AND FEES; PROVIDING FOR CONSTRUCTION PERMITS; PROVIDING FOR CONSTRUCTION AND MAINTENANCE STANDARDS; PROVIDING FOR PLANS OF RECORD; PROVIDING FOR CONFORMANCE WITH PUBLIC IMPROVEMENTS; PROVIDING FOR IMPROPERLY INSTALLED FACILITIES; PROVIDING FOR RESTORATION OF PROPERTY; PROVIDING FOR REVOCATION OR DENIAL OF PERMIT; PROVIDING FOR APPEAL DENIAL OF PERMIT; PROVIDING FOR INSPECTIONS; PROVIDING FOR ABANDONED FACILITIES; PROVIDING THAT UNDERGROUND INSTALLATION PREFERRED; PROVIDING FOR AS BUILT MAPS AND RECORDS; PROVIDING FOR COURTESY AND PROPER PERFORMANCE; PROVIDING FOR DRUG POLICY; PROVIDING FOR TREE MAINTENANCE; PROVIDING FOR SIGNAGE; PROVIDING FOR GRAFFITI ABATEMENT; PROVIDING FOR ALTERNATE MEANS OR METHOD OR WAIVER; PROVIDING FOR ORDERLY USE OF THE RIGHT-OF-WAY BY MULTIPLE USERS; PROVIDING FOR A DESIGN MANUAL; PROVIDING FOR PROHIBITED OR RESTRICTED AREAS FOR WIRELESS FACILITIES IN THE RIGHT-OF-WAY; PROVIDING FOR PREFERRED LOCATIONS; PROVIDING FOR ORDER OF PREFERENCE REGARDING ATTACHMENT TO EXISTING FACILITIES; PROVIDING FOR PLACEMENT REQUIREMENTS; PROVIDING FOR CAMOUFLAGE REQUIRED WHEN POSSIBLE; PROVIDING FOR GENERAL REQUIREMENTS; PROVIDING FOR ELECTRICAL SUPPLY; PROVIDING FOR INSTALLATION AND INSPECTIONS; PROVIDING FOR REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR; PROVIDING FOR REQUIREMENTS UPON ABANDONMENT; PROVIDING FOR GENERAL PROVISIONS; PROVIDING FOR INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS; PROVIDING FOR DESIGN MANUAL UPDATES; PROVIDING FOR ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bedford finds that the right-of-way, including but not limited to the streets, sidewalks, and utilities located therein, are vital to the everyday life of its citizens, visitors and businesses; and,

WHEREAS, the City of Bedford finds that there is limited available space in the right-of-way for the many competing uses of said space; and,

WHEREAS, the City is charged with conserving the limited physical capacity of the public rights-of-way which are held in public trust by the City for the benefit of its citizens, visitors, and businesses; and,

WHEREAS, the following regulations are necessary to assist in the management of facilities placed in, or over the public rights-of-way and in order to minimize the congestion, inconvenience, visual impact and other adverse effects that can occur during construction in the rights-of-way; to manage costs to the citizens resulting from the placement of facilities within the public rights-of-way; and to govern the use and occupancy of the public rights-of-way; and,

WHEREAS, the following regulations are necessary to preserve the physical integrity of the streets and highways; to control the orderly flow of vehicles and pedestrians; to keep track of the different entities using the rights-of-way to prevent interference between them; to assist on scheduling common trenching and street cuts; and to protect the safety, security, appearance, and condition of the public rights-of-way; and,

WHEREAS, orderly use and management of the rights-of-way is required for economic development; and,

WHEREAS, the following regulations are necessary to preserve and protect the health, safety and welfare of the City of Bedford, Texas and its citizens, visitors, travelers, and businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD, TEXAS:

SECTION 1. **That all matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.**

SECTION 2. **That Chapter 106, Article III, Section 106-65 through 106-74 are hereby repealed.**

SECTION 3. **That a new Chapter 96 "Right-of-Way Management" is hereby adopted to read as follows:**

Chapter 96 - RIGHT-OF-WAY MANAGEMENT
ARTICLE I. - GENERAL PROVISIONS

Sec. 96-1. – Title; policy and purpose.

This chapter may be known and cited as the Right-of-Way Management Ordinance for the City of Bedford, Texas.

The City of Bedford enacts these regulations to manage the public right-of-way, to ensure public health, safety and welfare and to promote the most efficient use of the right of way first and foremost for the traveling public, and also for water and sewer uses and for utility uses designed to benefit the citizens of the City of Bedford, including such uses as have been recognized in statutory and common law in the State of Texas.

Sec. 96-2. - Construction; governing law; venue.

This chapter shall be construed under and in accordance with the laws of the State of Texas and the City Charter and City Code to the extent that such Charter and Codes are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Tarrant County, Texas. All provisions of this Chapter shall apply to all persons involved with the Right-of-Way, all work performed therein, any facilities maintained therein or any other matter as applicable.

Sec. 96-3. - Scope.

This chapter shall be effective within the geographical limits of the City, including any areas subsequently annexed by the City.

Sec. 96-4. - Definitions.

The definitions in this section apply to all of Chapter 96.

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, are still in active use.**

Access line **means, unless the commission adopts a different definition under Section 283.003, a unit of measurement representing: (i) each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale; (ii) each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified**

by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or (iii) each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one path shall be counted for every 10 stations served; and may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

Ancillary **means secondary, supporting, or subordinate.**

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 this chapter**

Applicant **means a person submitting an application or proposal to the City for a license, franchise, permit or notice to install facilities or equipment or work in the Right-of-Way.**

Application **or** ***proposal*** **are synonymous for the purposes of this chapter. An "application" or "proposal" means the process by which the applicant submits a request and indicates a desire to be granted a license, permit or franchise for all, or a part, of the City. An "application" or "proposal" includes all written documentation, and official statements and representations, in whatever form, made by an applicant to the City.**

Assignment of an authorization **or** ***transfer of an authorization*** **means any transaction or action which effectively or actually transfers the authorization or franchise or changes operational or managerial control from one (1) person or entity to another.**

Authorization **or** ***Agreement to use the Right-of-Way*** **means a negotiated privilege pursuant to an agreement between the City in its discretion and a person, allowing a person to occupy any portion of a street, right-of-way, or easement owned or controlled by the City, and may be for a limited period of time or for a specific purpose.**

Certificated telecommunications provider **means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.**

City Council **or** ***Council/Franchising Authority*** **means the City council for the City of Bedford, Texas or its lawful successor, which is the governing body for the City.**

City Manager **shall mean the Bedford City Manager or designee.**

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.**

Commission **means the Public Utility Commission of Texas.**

Communications network **means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.**

Consumer price index **means the annual revised consumer price index for all urban consumers for Texas, as published by the Federal Bureau of Labor Statistics.**

Concealment **or** ***Camouflaged*** **means any Wireless Facility or Pole that is covered, painted, disguised, or blended in to its environment or otherwise hidden or kept from sight such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive. 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.**

DAS or Distributed Antenna System **shall be included as a type of Network Node and have the same meaning as "Network Node."**

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.**

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.**

Easement **refers to or shall include any public easement or other compatible use, whether created by dedication or by the other means, for uses which include public utility purposes or any other purpose whatsoever. "Easement" may include a private easement used for the provision of utilities, depending upon usage.**

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

Fiber Cable **or** ***Fiber Optic Cable*** **means a form of communication transmission that uses light to send data, high quality video and sound.**

Franchise or Franchise Agreement **means the initial authorization, or subsequent renewal granted by the City in order for a person to construct, operate, and maintain a system in all, or part, of the City right-of-way.**

Franchise expiration **means the date of expiration, or the end of the term of a franchise, permit or license agreement.**

Franchise fee **means the user fee or charge that the City requires as payment for using the streets, rights-of-way, public ways, and easements of the City.**

Gross receipts **means any and all compensation which is derived from the operation of the system, and which is attributable to the systems operations within the City as allowed by law.**

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 of Bedford, Texas.**

Local exchange telephone service **has the meaning assigned by Section 51.002, Utilities Code.**

Mayor **means the Mayor for the City of Bedford, Texas.**

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.**

Micro Network Node **means a network node that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, not longer than 11 inches.**

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.**

Municipal Park **means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity, and includes the various properties under the direction, control and supervision of the City.**

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.**

Node Support Pole **means a pole as defined by Chapter 284 of the Texas Local Government Code.**

Park **has the same meaning as "Municipal Park."**

Permit **means a document issued by the City authorizing installation, removal, modification and other work for equipment or facilities in accordance with the approved plans and specifications.**

Pole **means a service pole, municipally owned pole, node support pole, or other utility pole, and shall include network node support pole.**

Person **means any individual, corporation, business, trust, estate, trust, partnership, association of two (2) or more persons having a joint common interest, governmental agency, or other legal entity, including the City.**

Provider **has the same meaning as "Network Provider."**

Public Right-of-Way Management Ordinance **means this chapter 96 of the City of Bedford Ordinances and includes all other Bedford ordinances that comply with Chapter 284 of the Local Government Code.**

Right-of-Way, Public Way* or *Public Right-of-Way* or *Public Rights-of-Way* or *Rights-of Way **means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or rights-of-way now or hereafter held by the City (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the City or utility provider, with proper authorization, to use thereof for the purpose of installing or transmitting utilities over poles, wires, cable, conductors, ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property as may ordinarily be necessary. The term does not include a private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.**

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 and have the same meaning as "Network Node."**

State **means the State of Texas.**

Street **means only the portion of the right-of-way with a specially prepared surface used for vehicular travel, which surface may be concrete, asphalt or other material commonly used to prepare a surface for vehicular travel, and is limited to the area between the inside of the curb (when there is a curb) to the inside of the opposite curb, and does not include the curb area or the area between the two parallel edges of the surface used for vehicular travel where there is no curb. A Street is generally part of, but less than, or smaller in width than, the size or width of the right-of-way. Right-of-Way includes the sidewalks and utility easements and Street does not include a sidewalk or utility easement. A Street does not include the curb, sidewalk, or ditch, if any are present either at time of permitting or if added later.**

SWPPP **shall mean Storm Water Pollution Prevention Plan.**

TAS **means Texas Accessibility Standards.**

Thoroughfare **shall have the same meaning as "Street."**

TMUTCD **means Texas Manual of Uniform Traffic Control Devices.**
City **means the City of Bedford, Texas or its lawful successor, and includes the Bedford City Council.**

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 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.**

U.S.C. **means United States Code.**

Underground District* or *Underground Requirement Area* or *Underground Area **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, or other public or private restrictions, that prohibit installing aboveground structures in a Public Right-of-Way.

User **means a person or organization that owns, places or uses 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 Section 51.002 of the Utilities Code.**

Voice Service **means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).**

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 **means "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code Chapter 284.**

Sec. 96-5. - Unauthorized use of public rights-of-way.

The city may institute all appropriate legal action to prohibit any person from knowingly using the public rights-of-way unless the person has complied with the terms of this article.

Sec. 96-6. - Reserved

ARTICLE II
RIGHT-OF-WAY MANAGEMENT

Sec. 96-7. - Right-of-way construction.

No person shall commence or continue with the construction, installation or operation of facilities within the right-of-way in the City except as provided by the ordinances of the City and the directives of the City Manager. All construction activity in City right-of-way will be in accordance with this chapter.

Sec. 96-8. – Authorization; Registration; Compensation and Fees.

A. Registration

(1) In order to protect the public health, safety and welfare, all users of the right-of-way will register with the City of Bedford.

(2) Registration and permits will be issued in the name of the person who will own the facilities.

(3) Registration and permits are not authorizations to install facilities in the rights-of-way; such authorization must be through municipal franchise or license or municipal agreement, except when otherwise required by state law.

(4) Registration must be renewed every five (5) years. For utilities with a current franchise or license, the franchise or license will be evidence of renewal. If a

registration is not renewed and subject to sixty-day notification to the owner, the facilities of the user will be deemed to have been abandoned.

(5) When any information provided for the registration changes, the user will inform the City of Bedford of the change no more than thirty (30) days after the date the change is made.

(6) Registration shall include:

(a) The name of the user of the right-of-way;

(b) The name, address and telephone number of people who will be contact person(s) for the user;

(c) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the user;

(d) The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day and said emergency contact shall be employed by and have binding and decision-making authority for the owner of the facilities;

(e) Insurance

(i) Prior to construction in the right-of-way, an applicant must provide, and users must maintain, acceptable proof of liability insurance in the total amount of six million dollars ($6,000,000); one million dollars ($1,000,000) primary plus five million dollars ($5,000,000) umbrella if requested by the owner of the facilities, or other provisions as acceptable to the City Manager. The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the applicant or user require adjustment of the coverage.

(ii) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.

(iii) Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.

(iv) The applicant shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts. The City may accept a certificate of insurance or the City may require another form of legally binding proof of insurance.

(v) An insurer has no right of recovery against the City. The required insurance policies shall protect the person and the City. The insurance shall be primary coverage for losses covered by the policies.

(vi) The policy clause "other insurance" shall not apply to the City if the City is an insured under the policy.

(f) Bonds

(i) Applicant or Applicant's contractor, at City's option, shall file an annual surety bond which will be valid each year construction will occur through one (1) full year after the completion of the construction from a surety company authorized to do business in the State of Texas in the amount of the estimated amount of the cost to restore the right-of-way for the work anticipated to be done in that year, in the event the applicant leaves a job site in the right-of-way unfinished, incomplete or unsafe or other provisions as acceptable to the City Manager.

(ii) The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the City.

(g) Indemnity

(i) To the extent allowed by state law, each person placing facilities in the public rights-of-way shall agree to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the person's acts or omissions; and (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to the person, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to the agents, officers and employees of the person, person's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

(ii) This indemnity provision shall not apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

(iii) The provisions of this indemnity are solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

(7) The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the City.

(8) Failure to maintain registration requirements. In addition to all other legal penalties, including criminal penalties, failure to register or to maintain and update registration information may result in denial of a permit application or removal of facilities.

B. Authorization

(1) Municipal Authorization or Agreement shall be required, except when clearly preempted by state law. Nothing in this ordinance shall be considered to grant authorization to any user. When any state law authorizing right-of-way use is struck down, pre-empted, declared to be invalid or void, in whole or in part, the user relying upon said law for authorization shall seek separate authorization or shall cease using the right-of-way.

(2) When Municipal Authorization or Agreement is required, permit for construction work may not be submitted until said Authorization or Agreement is obtained.

(3) Municipal authorization does not extend to the use of any property or facilities other than the right-of-way.

(4) Municipal authorization does not address or allow the use of third party facilities in the right-of-way.

(5) This Chapter does not constitute or create authority to place, reconstruct, or alter facilities in, on, or over the public rights-of-way, and said authority must be obtained by separate instrument in accordance with this section or by operation of other laws.

C. Compensation and fees

(1) Municipal right-of-way use shall be compensated as required by the state constitution, state law, franchise, license or other agreement.

(2) The City may structure due dates on payments in such a manner so as to be administratively efficient.

(3) Application fees, as allowed by state law, for work or installations in the right-of-way shall be the fees set by the City Council. Such fees may be set by ordinance, resolution, in the budget or by any other lawful means.

(4) Failure to pay application fees, or failure of any payment to properly process shall result in the denial or withdraw of a permit.

Sec. 96-9. - Construction in the right-of-way.

A. No person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.

(1) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the City should be notified in writing within two (2) business days of any construction related to an emergency response, including a reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities that were relocated, if applicable.

(2) The phrase "construction or installation of facilities" does not include the installation of facilities necessary to initiate service to a customer's property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement, the closure of a nonresidential traffic lane, excavation or boring.

B. The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions set out by the City Manager or designee.

C. The person requesting a permit will provide the City Manager or designee with documentation in the format specified by the City Manager describing:

(1) The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction should be shown on a set of scaled dimensioned construction plans, plan/profile sheet, a street view and an aerial map. Said plans should indicate the current right-of-way lines and any existing City facilities. Said plans shall show any proposed underground conduit, type of casing pipe required, if applicable, overhead lines, network nodes, ancillary equipment, or any other facilities to be installed. The drawings shall show a cross sectional profile, identify all existing utilities and any existing or potential utility conflicts.

(2) For installation of any proposed pole, the applicant shall provide sectional detail showing depth of anchor, scaled dimensional drawings of the proposed pole, as well as any other proposed equipment associated with the proposed installation, and shall indicate spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances.

(3) All applications shall include a before and after street view image. The after-image needs to include any proposed poles and all proposed attachments, and any associated or ancillary equipment, whether attached or standalone.

(4) If the project is within the State right-of-way, the applicant must provide evidence of a permit or permission from the State.

(5) If a City pole or poles or light structure or structures will be used or will be in the area of the proposed construction, the pole or poles or light structure or structures will be identified. No electric meter shall be mounted on a City pole or light structure.

(6) Provider / Applicant shall use 240 voltage when connecting to any City infrastructure and provide the key to the meter upon installation.

(7) All plans shall reflect that no facilities to be installed will obstruct an existing or planned sidewalk, walkway, bicycle lane or lane of vehicular traffic.

(8) Engineering plans which will be on a scale of one (1) inch equals fifty (50) feet unless otherwise approved by City Manager.

(9) The Application shall include detail of the location of all right-of-way and utility easements which applicant plans to use.

(10) The Application shall include detail of all existing City utilities in relationship to applicant's proposed route.

(11) The Application shall include detail of what applicant proposes to install, such as network nodes, poles, pipes, size, number of innerducts, valves, or other facilities.

(12) The Application shall include detail of plans to remove and replace asphalt or concrete in streets (include City of Bedford standard construction details).

(13) The Application shall include drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, network nodes, micro-network nodes, or other facilities, including depth located in public right-of-way.

(14) The Application shall include handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access.

(15) The Application shall include complete legend of drawings submitted by applicant.

(16) If paper copies are required, five (5) sets of engineering plans must be submitted with the permit application.

(17) The Application shall include the name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.

(18) The Application shall include the construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way, and the dates and times work will occur, all of which (methods, dates, times, and other applicable information) are subject to approval of the City Manager or designee.

(19) The Application shall include a statement that the requirements of Section 96-8 "Registration" are met.

(20) The Application shall include a traffic control plan approved by the City Manager, which shall specify the traffic control measures to be provided; SWPPP and a trench safety plan may also be required based on the proposed scope of work. An approved traffic control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

(21) No projecting attachments shall be less than eight (8) feet above the ground, if not projecting toward the street. If an attachment is projecting toward the street, the attachment shall be installed no less than sixteen (16) feet above the ground.

(22) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause any interference with City public safety radio system, traffic signal light system or other City communications systems or components, regardless of whether or not a permit is required. The right-of-way user shall provide evidence in a form acceptable to the City that the proposed installation will be compatible with said City systems and will not cause any interference with the City public safety radio system, traffic signal light system or other City communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.

(23) The plans shall demonstrate that all federal and state laws and City ordinances will be obeyed, and that all sections of this Chapter, including Article II "Design Manual" will be complied with as applicable. Construction in right-of-way adjacent to a school shall be required to follow all state law requirements, including the requirements in the Educational Code regarding work on school grounds, including, but not limited to, Chapters 21 and 22, as applicable.

D. All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The City Manager or designee shall be provided access to the work and to such further information as he or she may reasonable require to ensure compliance with the permit.

E. A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the City Manager or designee at all times when construction or installation work is occurring.

F. All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the City Manager or designee. The City Manager or designee will use best efforts to approve or disapprove a request for permit as soon as possible.

G. A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the City of Bedford, if requested by the City Manager and a copy of written permission for work in railroad right-of-way from the applicable railroad shall be provided if requested by the City Manager.

H. A request for a permit must be submitted at least ten (10) working days before the proposed commencement of work in the request, unless waived by the City Manager.

I. Requests for permits will be approved or disapproved by the City Manager within a reasonable time or receiving all the necessary information. The City Manager will use best efforts to approve or disapprove a request for permit as soon as possible.

J. The City Manager or the applicant can request a pre-construction meeting with the permittee and their construction contractor.

K. Permit applications are required for construction on new, replacement or upgrading of the company's facilities in the right-of-way, either aerial or underground.

L. The failure of a person to request and obtain a permit from the City prior to performing any of the above listed activities in or over any right-of-way, except in an emergency, will subject the person to a stop-work order from the City and enforcement action pursuant to the City's Code of Ordinances.

M. If the person receiving the permit fails to act upon the permit within one hundred eighty (180) calendar days of issuance, the permit shall become invalid, and the person will be required to obtain another permit.

N. If State or Federal law provides that a permit is not required for certain work to be done, then a person proposing to do such work shall be required to provide notice two (2) working days prior to performing such work. The following requirements must be met, even if no permit is required pursuant to State or Federal law.

O. Certification of a State registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules, regulations, and publicly disclosed design specifications established in the City's Right-of-Way Management requirements, including the Design Manual are required.

P. To the extent applicable, all of the requirements or conditions for construction and occupancy of the right-of-way shall continue during the entire time that the installed facilities remain in the Right-of-Way.

Sec. 96-10. - Construction and Maintenance standards.

A. The following shall be required when facilities are constructed in the Right-of-Way, regardless of whether a permit is required, and, to the extent applicable, for as long as the facilities remain in the Right-of-Way.

(1) The City must be notified twenty-four (24) hours in advance that construction is ready to proceed by the right-of-way user, their contractor or representative. The right-of-way user or contractor must have previously called for any needed locations for right-of-way facilities. At the time of notification, the right-of-way user will inform the City Manager of the number (or other information) assigned from the one-call system. The provider must have previously contracted the City and obtained all needed locational information for City utilities.

(2) All construction shall be in conformance with all City codes and applicable local, state and federal laws and must be done in a good and workmanlike manner and in accordance with all applicable sections of this chapter.

(3) Three-by-three (3 × 3) foot information signs stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur forty-eight (48) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted on public right-of-way one hundred (100) feet before the construction location commences and each one hundred (100) feet thereafter, unless other posting arrangements are approved or required by the City Manager.

(4) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.

(5) Lane closures on major thoroughfares will be limited to after 8:30 a.m. and before 4:00 p.m. unless the City Manager grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the specifications of the City Manager and must be in accordance with the filed lane closure plan approved by the City Manager.

(6) Permittees are responsible for the workmanship and any damages by a contractors or subcontractors. A responsible representative of the permittee will be available to City staff at all times during construction.

(7) Permittee shall be responsible for storm water management erosion control that complies with City, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request, permittee may be required to furnish documentation submitted or received from federal or state government.

(8) Permittee or contractor or subcontractor will notify the City Manager immediately of any damage to other utilities, either City or privately owned.

(9) It is the City's policy not to cut streets or sidewalks; however, when a street or sidewalk cut is required, prior approval must be obtained by the City Manager and all requirements of the City Manager shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

(10) Installation of facilities must not interfere with City utilities, in particular gravity dependent facilities.

(11) New facilities must be installed to a depth approved by the City Manager.

(12) All directional boring shall have locator place bore marks and depths while boring is in progress. The boring method and bore pit locations shall be identified. Locator shall place mark at each stem with paint dot and depth at least every other stem.

(13) The working hours in the rights-of-way are 9:00 a.m. to 4:00 p.m., Monday through Friday. Work that needs to be performed after 4:00 p.m. Monday through Friday must be approved in advance. Any work performed on Saturday must be approved twenty-

four (24) hours in advance by the City Manager. Directional boring is permitted only Monday through Friday 9:00 a.m. to 4:00 p.m., unless other hours are approved in advance. No work will be done on Sundays or City holidays, except for emergencies.

(14) People working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of the Geographic Information System or the plans of records does not satisfy this requirement.

(15) Permittee will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the City Manager, permittee shall verify locations by pot holing, hand digging or other method approved by the City Manager prior to any excavation or boring with the exception of work involving lane closures, as discussed above.

(16) Placement of all manholes and/or hand holes must be approved in advance by the City Manager. Handholes or manholes will not be located in sidewalks, unless approved by the City Manager.

(17) Locate flags shall not be removed from a location while facilities are being constructed.

(18) Construction which requires pumping of water or mud shall be contained in accordance with City of Bedford ordinances and federal and state law and the directives of the City Manager.

(19) All facilities installed in the right-of-way shall be in earth tone colors or in colors that blend with the surroundings, or if on a Service Pole or Municipally Owned Pole, shall match the color and finish of the pole, or must be approved by the City.

(20) All facilities installed in the right-of-way shall be capable of being identified through a GIS shape file or other means as acceptable to the City Manager or designee. Said identification shall be provided at the time of application and shall be visible on the facilities when installed.

(21) Above ground wires shall be located on only one side of the right-of-way.

(22) The right-of-way user or contractor must obtain any needed permits for electrical work and provide sealed engineered drawings for conduit size, circuit size, calculations for Amperage, or any other required information. Provider shall be responsible for obtaining any required electrical power service to any installation. Any such electrical supply must be separately metered and must match City infrastructure voltage.

(23) Right-of-way users shall complete construction as expeditiously as possible and lane closures or work that inconveniences the traveling public shall be minimized. Lane closures shall not last longer than four (4) hours, unless a different period of time is shown on the permit.

(24) Right-of-way work shall be completed in the amount of time shown on the permit; but if no completion time is shown on the permit the work shall be complete in not more than one (1) year.

(25) All right-of-way work and facilities installed shall be done in a good workman like manner; shall meet all applicable codes; shall be maintained and kept in good repair and shall be aesthetically pleasing.

(26) All efforts shall be made to avoid or minimize negative visual impact to the surrounding area and to enhance the safety requirement for vehicles and pedestrians, particularly in areas where small children or other vulnerable members of the population may be located.

(27) Installations which require ancillary ground equipment with a footprint of twenty-five (25) square feet or more shall be spaced at least 300 feet apart.

(28) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.

(29) A statement that the requirements of Section 96-8 “Registration” are met.

(30) A traffic control plan approved by the City Manager, which shall specify the traffic control measures to be provided; SWPPP and a trench safety plan may also be required based on the proposed scope of work. An approved traffic control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

(31) A traffic control plan, which shall specify the traffic control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

(32) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause any interference with City public safety radio system, traffic signal light system or other City communications systems or components, regardless of whether or not a permit is required. The right-of-way user shall provide evidence in a form acceptable to the City that the proposed installation will be compatible with said City systems and will not cause any interference with the City public safety radio system, traffic signal light system or other City communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.

B. To the extent applicable, the above requirements shall continue during the entire time that the installed facilities remain in the Right-of-Way.

Sec. 96-11. - "Plans of record".

A. Right-of-way users will provide the City Manager or designee with "plans of record" within ninety (90) days of completion of facilities in the right-of-way. Users which have facilities in the right-of-way existing as of the date of this ordinance who have not provided "plans of record" plans shall provide one (1) quarter of the information concerning facilities in City right-of-way within one (1) year after the passage of the ordinance and one (1) quarter each six (6) months thereafter. The plans shall be provided to the City with as much detail and accuracy as required by the City Manager. All the requirements specified for the plans submitted for the initial permit, as set forth in Section 96-9, shall be submitted and updated in the plans of record. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. The detail will not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of "plans of record" shall be in digital format.

B. This requirement, or portions of this requirement, may be waived by the City Manager or designee for good cause.

C. If the release of the location of any utilities, including water and sewer, or of plans of record submitted under this section would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this section include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the City may not disclose that information to the public without the consent of the right-of-way user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a right-of-way user to designate all matters in its plans of record as confidential or as trade secrets.

D. User shall maintain accurate maps and other appropriate records of its facilities and equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. User will provide additional maps to the City upon request.

Sec. 96-12. - Conformance with public improvements.

Whenever by reasons of widening or straightening of streets, water or sewer line projects, or any other public works or City projects, (e.g. install or improve storm drains, water lines, sewer lines, or any other public works or City project) it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform the underground or overhead facilities of a right-of-way user to another part of the right-of-way, such alterations shall be made by the owner of the facilities at their expense (unless provided otherwise by state law or a franchise in effect on August 26, 1999, until that franchise expires or is otherwise terminated or is amended or the tariff is changed) within the time limits set by the City Manager working in conjunction with the owner of the facilities; or if no time frame can be agreed upon, within ninety (90) days from the day the notice was sent to make the alterations, unless a different schedule has been approved by the City Manager or designee. Facilities not moved after ninety (90) days or the time set forth in the notice shall be deemed abandoned and may be removed in accordance with Section 96-18 "Abandoned Facilities."

Sec. 96-13. - Improperly installed facilities.

A. Any person doing work in the City right-of-way shall properly install, repair, upgrade and maintain facilities.
B. Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
  (1) The installation, repairs, upgrade or maintenance endangers people;
  (2) The facilities do not meet the applicable City codes;
  (3) The facilities are not capable of being located using standard practices;
  (4) Underground facilities that are installed less than twenty-four (24) inches in depth;
  (5) Facilities or construction in regard to placement of said facilities that remains incomplete or hazardous after construction work is finished or time for completion has passed, including but not limited to holes in paved areas or ground, handholes or manholes that are improperly sealed, and broken equipment or any other incomplete or hazardous condition; or
  (6) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the City Manager.
C. Facilities will be considered improperly installed if said facilities cause any interference, including but not limited to radio or structural interference, with City public safety radio system, traffic signal light system, traffic cameras or other communications components.

Sec. 96-14. - Restoration of property.

A. Users of the right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the City Manager.

B. Restoration must be to the reasonable satisfaction of the City Manager and the property owner. The restoration shall include, but not be limited to:
  (1) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding, as directed by the City Manager;
  (2) Installation of all manholes and handholes, as required;
  (3) Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by the City Manager;
  (4) Leveling of all trenches and backhoe lines;
  (5) Restoration of excavation site to City specifications; and
  (6) Restoration of all landscaping, ground cover, and sprinkler systems.

C. All locate flags shall be removed during the clean-up progress by the permittee or contractor at the completion of the work.

D. Restoration must be made in a timely manner as specified by approved City schedules and to the satisfaction of City Manager or designee. If restoration is not satisfactory and performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any permits not approved until all restoration is complete.

E. If a person fails to restore property as set out in this section, the City shall give five (5) days written notice to the person at the address shown on the permit. If the person does not initiate repairs during the five-day period, or fails to complete the repairs within thirty (30) days thereafter, the City may elect to repair such portion of the right-of-way as may have been disturbed by the person, its contractors, or agents at the cost of the person performing the right-of-way work. These time periods may be shortened or waived in cases of a threat to public health, safety or welfare. Upon receipt of an invoice from the City, the person will reimburse the City for the costs so incurred no later than thirty (30) calendar days from the date of the City invoice.

F. Should the City reasonably determine, within two (2) years from the date of the completion of the repair work, that any of the said restoration work failed to meet the existing standards of the City, the person shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies.

G. Notwithstanding any of the above sections, if the City determines that the failure of the person to properly repair or restore the right-of-way constitutes a threat to the public health, safety or welfare, the City may undertake emergency repairs and restoration efforts. The City may attempt to provide emergency notice to the person responsible, but is not obligated to do so. The right-of-way user shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

Sec. 96-15. - Revocation or denial of permit.

If any of the provisions of this article are not followed, a permit may be revoked by the City Manager or designee. If a person has not followed the terms and conditions of this article in work done pursuant to a prior permit, new permits may be denied or additional terms required.

If a permit is denied upon initial submission for incompleteness or for an issue which is capable of correction, the applicant may complete or correct the application and resubmit the application. Applications not resubmitted within thirty-one (31) calendar days shall be considered withdrawn.

Sec. 96-16. - Appeal from denial or revocation of permit.

An Applicant may appeal from denial or revocation of permit to the City Manager. Appeal shall be filed with the City Secretary within five (5) calendar days from the date of the decision being appealed.

A denial or revocation will be upheld unless a person can show that there is an error and that the person was following all of the requirements of this Article and all right-of-way engineering requirements.

Sec. 96-17. - Inspections

The City may perform inspections of any right-of-way work, including installations, maintenance, modifications or any other right-of-way work, whether such work is subject to permit requirements or allowed to be done without a permit. The City may perform visual inspections of any right-of-way work located in the right-of-way as the City deems appropriate without notice. If the inspection requires physical contact with right-of-way work, the City may provide the right-of-way user with notice prior to said inspection. Right-of-way user may have a representative

present during such inspection. In the event of an emergency situation, the City may, but is not required to, notify the right-of-way user prior to the inspection. The City may take any needed action to remediate an emergency. The City shall notify the right-of-way user as soon as practical after said remediation.

Sec. 96-18. - Abandoned Facilities

A. Duty to Remove. A person that has placed facilities in the right-of-way shall remove said facilities and related equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. If in the judgment of the City, removal of underground facilities would cause damage, this requirement may be waived.

B. Time for Removal
- **(1) The City may notify the person that said facilities must be removed immediately when necessary to ensure public health, safety, and welfare.**
- **(2) If immediate removal is not required, the removal must be completed within the time set forth in the written Notice to Remove from the City and if no time is set out, then within ninety (90) days for the facilities and related equipment being Abandoned.**
- **(3) If the facilities are not removed after the ninety (90) day notice to remove, the City may remove the facilities thirty (30) days after notice of a final finding of Abandonment.**
- **(4) When a person removes, or Abandons permanent structures in the Right-of-Way, the person shall notify the City Manager in writing of such removal or Abandonment and shall file with the City Manager the location and description of each facility and ground equipment removed or Abandoned.**
- **(5) The City Manager may require the person to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.**

C. Deemed Abandoned

Facilities may be deemed Abandoned as set out in this Chapter. Additionally, facilities may be deemed Abandoned if:
- **(1) A person does not relocate facilities as set out in Section 96-12 "Conformance with Public Improvements."**
- **(2) A person does not correct or abate improperly installed facilities as set out in Section 96-13 "Improperly Installed Facilities."**
- **(3) A person fails to maintain the registration requirements set forth in Section 96-8 "Authorization; Registration; Compensation and Fees."**
- **(4) A person utilizing the right-of-way cannot be found or contacted.**
- **(5) A person utilizing the right-of-way fails to pay the required compensation.**
- **(6) A person utilizing the right-of-way fails to comply with the requirements of this Chapter after being given due notice of any deficiencies. The notice requirement shall only apply to persons who have maintained the required Registration as set out in Section 96-8 "Authorization; Registration; Compensation and Fees" and are capable of being contacted.**

Sec. 96-19. - Underground installation preferred

A. The underground placement of facilities is encouraged.
B. Facilities shall be installed underground where existing utilities are already underground.
C. Underground conduits and ducts shall be installed in the Public Rights-Of-Way between the adjacent property line and curb line unless otherwise directed by the City.
D. Conduits and ducts shall be installed parallel with the curb line and cross the Public Rights-Of-Way perpendicular to the Public Rights-Of-Way centerline unless otherwise directed by the City.
E. Ducts and conduits shall be installed by trenchless excavation or directional boring whenever commercially economical and practical. Trenchless excavation shall be used to place Facilities under paved Public Rights-Of-Way centerline unless otherwise directed by the City.

Sec. 96-20. - As Built Maps and Records.

User shall maintain accurate maps and other appropriate records of its facilities and equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. User will provide additional maps to the City upon request.

Sec. 96-21. - Courtesy and Proper Performance.

User shall make citizen satisfaction a priority in using the Right-of-Way. User shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its facilities and related ground equipment in the Right-of-Way. User'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 designee, User is not interacting in a positive and polite manner with citizens, the City Manager may request User to take all remedial steps to conform to these standards.

Sec. 96-22. - Drug Policy.

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 User's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City Premises is prohibited.

Sec. 96-23. - Tree Maintenance.

User, its contractors, and agents shall provide written notice to the City Manager before trimming trees hanging in the Right-of-Way. When directed by the City Manager, User shall trim under the supervision and direction of the City Manager. The City shall not be liable for any damages, injuries, or claims arising from User's actions under this section.

Sec. 96-24. - Signage.

User shall post and maintain legible identification showing its name, location identifying information, and emergency telephone number in an area on a cabinet of a facility that is visible to the public. Signage required under this section shall not exceed four (4) inches by six (6) inches, unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.

Except as required by Laws or by the Utility Pole owner, User shall not post any other signage or advertising on the facilities or equipment.

Sec. 96-25. - Graffiti Abatement.

As soon as practical, but not later than fourteen (14) calendar days from the date User receives notice thereof, User shall remove all graffiti on any of its facilities and related ground equipment located in the Right of Way and shall restore to the previous condition or better. The foregoing shall not relieve the User from complying with any City graffiti or visual blight ordinance or regulation.

Section 96-26. - Alternate means or method; waiver

A. A person may file a request with the City Manager to use alternate means or methods in right-of-way construction or maintenance. In determining whether any requirement under this section may be waived or if an alternate method or means may be used, the City Manager may consider all reasonable factors, including, but not limited to:

(1) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in risk;
(2) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase of service interruption'
(3) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in potential for liability for accidents;
(4) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in construction;
(5) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in availability of services; or
(6) To any other unreasonable technical or economic burden.

B. There shall be no right to receive permission to use an alternative means or method and denial by the City Manager shall be final.

Sec. 96-27. - Orderly Use of the Right-of-Way by Multiple Users

A. In the exercise of governmental functions, the City has first priority over all other uses of the rights-of-way. Traffic uses shall be considered as the primary use and the City reserves the right to lay sewer, water, gas and other pipe lines or cables and or cables and conduits, and to do underground and overhead work, including attachments, restructuring or changes in aerial or underground facilities in, across, along, over, or under a public street, alley or right-of-way and to change the curb, sidewalks of the grade of streets. Uses should be designed so as to cause the least interference with traffic, including signalization.

B. The City shall assign the location in or over the rights-of-way among competing users of the rights-of-way with due consideration to the public health, safety and welfare considerations of each user type, and to the extent the City can demonstrate that there is limited space available for additional users, may limit new users or require removal of abandoned or obsolete facilities, as allowed under state or federal law.

C. If the City authorizes abutting landowners to occupy space under the surface of any street, alley or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized users of the public rights-of-way. If the City closes or abandons a public right-of-way that contains a portion of a person's facilities, the City may close or abandon such right-of-way subject to the right of the person, provided said facilities have not been abandoned and provided the person is a registered user of the right-of-way.

Sec. 96-28—100. - Reserved.

ARTICLE III. – DESIGN MANUAL

Sec. 96-101. - Purpose

This Design Manual is for maintenance of, siting and criteria for the installation of Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment and applies to any and all maintenance, siting, installations, collocations, or other placement of, in, over or under the Public Rights-of-Way of Network Nodes, Node Support Poles, Micro Network Nodes, Distributed Antenna System(s), microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284 of the Local Government Code or installed pursuant to an Agreement to use the Right-of-Way or Authorization or installed as may otherwise be allowed by state law.

The City enacts these design requirements and guidelines in order to meet its fiduciary duty to its citizens, and to give assistance and guidance to Network Providers in the safe, aesthetically pleasing, efficient, and timely installation of facilities.

Sec. 96-102. -Prohibited or Restricted Areas for Wireless Facilities in the Right-of-Way

A. Prohibited: Municipal Parks and Residential Areas.

A Network Provider may not install a new Node Support Pole in the following locations:

(1) in a Municipal Park; or

(2) in right-of-way that is adjacent to a Street that is:

(a) not more than fifty (50) feet wide at average width, measuring vehicular traveled portion only as set out in the definition of "Street" and the measurement does not include intersection and refers only to the main traveled portion measured at mid-block or mid-point between intersections; and

(b) adjacent to developed or undeveloped single-family residential lots, other multifamily residential area or land that is designated for residential use by zoning or deed restrictions.

(3) Construction in right-of-way adjacent to a school is prohibited, unless all contractors, sub-contractors, or other workers follow all statutory requirements in the Educational Code regarding work on school grounds, including, but not limited to, Chapters 21 and 22.

B. Prohibited: Undergrounding District.

(1) Above ground structures shall not be installed in an Underground District or Underground Requirement Area, except as provided herein.

(2) 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 the appropriate zoning, land use approval or other required approval.

(3) In addition to areas designated in this ordinance, future areas may be designated from time to time by the City as Underground Required Areas by any means, including but not limited to, means such as ordinances, resolutions, or filed plats. If an area is converted from an area that allows overhead lines to one that prohibits overhead lines, all subsequent installations shall meet the requirements for an Underground District.

(4) If a location is designated by the City to be Underground Required 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 automatically revoked, 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 allowed for the transition of other overhead facilities.

C. Restricted: Historic District and Design Districts.

(1) 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 or Historic District.

(2) Concealment Required

(a) As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, Concealment measures are required for Network Nodes or Node Support Poles or related ground equipment or any portion of the Nodes, poles, or equipment.

(b) Said Concealment measures shall minimize the impact to the aesthetics in a Historic District or Design District.

(3) Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

D. Historic Preservation Laws and Requirements.
Network Provider shall comply with and observe all applicable City, State, and federal laws and requirements, including historic preservation laws and requirements.

E. Historic Landmarks.
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.

F. Designated Areas
- **(1) The Council may designate an area as a Historic District, Design District or Underground District at any time.**
- **(2) Underground District**
  - **(a) Underground Districts or Underground Requirement Areas are not limited to those designated above and any area that meets the definition of Underground District or Underground Requirement Area. An area does not need to be designated by this Ordinance to be considered to be within an Underground District. Such designation does not require a zoning case. Any area declared to be an Underground District by the City Council or any area that meets the definition of Underground District or Underground Requirement Area shall be subject to all requirements and protections for an Underground District.**
- **(3) Design District**
  - **(a) Design District Number 1 is the area referred to as the Central Bedford Business District. Its boundaries are approximately as follows: bordered by Bedford Road on the North and West, Murphy Drive on the East, and State Highway 121 on the South.**
  - **(b) Design District Number 2 is the area referred to the Master Highway Corridor Overlay, which is designated as the lots, tracts and parcels of land so indicated on the official zoning map for the City of Bedford. This area consists generally of that property which is located adjacent to and within two hundred (200) feet of the rights-of-way of State Highway 121 and 183. If any portion of said property is located within the two hundred (200) feet threshold, the entire limits of the property have been included.**
  - **(c) Design District Number 3 is the area referred to as Bedford Commons. Its boundaries are approximately as follows: bordered by Bedford Road on the North, Central Drive on the East, Airport Freeway on the South and Forest Ridge Drive on the West.**
  - **(d) Design District Number 4 is the area referred to the Cultural District. Its boundaries are approximately as follows: bordered by Harwood Road on the North, Bedford Road on the South, and along the East and West side of Forest Ridge Drive to include the Boys Ranch Park and Activity Center on the West and the Bedford Public Library and Old Bedford School to the East.**
  - **(e) Design District Number 5 is the area referred to as the Hospital District. Its boundaries are approximately as follows: bordered by Airport Freeway on the North, the City Limits Boundary to the East, Tibbets Drive on the South and Park Place Avenue on the West.**
  - **(f) The City Council may designate an area as a Design District at any time. An area does not need to be designated in this Ordinance to be considered to be within a Design District. Such a designation does not require a zoning case. Any area designated by the City Council as a Design District or any area that meets the definition of a Design District shall be subject to all requirements and protections for a Design District.**
- **(4) Historic District**

The City Council may designate an area as a Historic District at any time. An area does not need to be designated by this Ordinance to be considered to be within a Historic District. Such designation does not require a zoning case. Any area declared to be a Historic District by the City Council or any area that meets the definition of Historic District shall be subject to all requirements and protections for a Historic District.

G. Defense

It shall be a defense to the above requirements prohibiting or restricting location of facilities in a Park, Residential Area, Historic District, Design District or Underground District that the Network Provider obtained advance written approval or waiver of restrictions from the City before collocating new Network Nodes or installing new Node Support Poles or ground equipment in a prohibited or restricted location. In any prosecution herein for such prohibition or violation of any restrictions, it shall be an affirmative defense to have an Agreement with the City that approved such location or waived the applicable restriction.

If an Agreement is granted to locate in a prohibited location, the Network Provider shall be required, as a condition for approval of new Network Nodes or new Node Support Poles in a prohibited location, to install reasonable design or concealment measures for the new Network Nodes or new Node Support Poles. Therefore, any request for installations in a prohibited location, must be accompanied with concealment measures in the permit applications.

The City requests that a Network Provider explore the feasibility of using certain 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 all locations of the City.

H. Private Deed Restrictions and Property Owners Association Rules.

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.

I. Ground equipment

(1) Ground Equipment shall be minimal and the least intrusive at all sites.

(2) In order to maximize line of sight at street corners and intersections and minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or street intersection.

(3) Ground equipment may not be installed at street corners or intersections within a visibility triangle.

(4) Ground equipment shall not be installed near a driveway.

J. Each Permit Application shall designate if the requested area for installation is within a Residential area, a Municipal Park, an Underground District or Underground Requirement Area, a Historic District or a Design District.

Sec. 96-103. - Preferred Location

A. The following locations, in the order listed, are the preferred locations for installation of poles or wireless facilities:

(1) Industrial areas.

(2) Areas designated by the City as a Highway Rights-of-Way Area, provided that such areas are not adjacent to a Municipal Park, Residential Area, Historic District, Design District or any prohibited area set out above.

(3) Retail and Commercial areas, provided such areas are not in a prohibited location, such as an Underground District, Design District or Historic District.

B. In the absence of state law or an Agreement or Municipal Authorization providing otherwise, Network Nodes shall be restricted to Preferred Locations set out in this section.

96-104. - Order of Preference regarding attachment to existing facilities.

A. The following shall be the order of preference for the attachment of Network Nodes to existing facilities, beginning with most preferred location and ending with least preferred location. In addition to the preference set out by the City, existing facilities may be owned by third parties and may not be available for attachment of facilities or may require authorization from other parties.

B. Order of preference from most preferable to least preferable.

(1) Most preferable - 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) Preferable - Existing Utility Poles (electric poles or telephones poles) shall be the preferred support facility for Network Nodes and related ground equipment.

(3) Least preferable - Municipal Service Poles, which shall require an agreement with the City. Municipal Service Poles includes (in order of preference):

(a) Non-decorative street lights.

(b) Traffic signal structures – Network Nodes may only be attached to traffic signal structures when such installation will not interfere with the integrity of the facility and will not interfere with the safety of the public. Any 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;

(iii) Shall not puncture or drill into the structure; and

(iv) Have a separate access point than the traffic signal structure.

(c) Other municipal service pole use is discouraged.

(4) New Node Support Poles shall also be least preferred. Collocation shall generally be preferred over new poles. New poles shall not be installed in prohibited areas and shall only be allowed in restricted areas to the extent all requirements are followed or a waiver is granted. Any new poles shall be camouflaged to the extent allowed by law as set out in this Chapter.

C. Ground equipment should be minimal and the least intrusive.

D. In the absence of state law or an Agreement or Municipal Authorization providing otherwise, Network Nodes, if allowed, shall be restricted to Most Preferable Locations set out in this section and shall be prohibited in the Least Preferable.

Sec. 96-105. - Placement Requirements.

A. 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 municipality's publicly disclosed public right-of-way management ordinance or this Design Manual; or

(5) violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

B. Network Node facilities shall be installed in accordance with Section 96-10 and all other applicable requirements of this Chapter.

C. Right-of-Way.

(1) Network Nodes installation shall follow all applicable requirements of this chapter, including Section 96-10.
(2) Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two (2) feet of the outer edge of the Right-of-Way line.
(3) Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way.
(4) No protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

D. Parks. For the safety of park patrons, particularly small children, and to allow full line of sight near 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. The Network Provider may request a waiver of the requirement that such equipment not be within two hundred and fifty (250) feet of a park from the Zoning Board of Adjustment.

E. There shall be no more than one (1) Network Node on any one (1) Pole.

Sec. 96-106. Camouflage Required When Possible

A. Camouflage is required by the City when Wireless facilities are allowed, as set forth above, in Design Districts with Decorative Poles or in Historic Districts.

B. It is the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial or in a designated Highway District area.

C. Companies shall submit their proposal for camouflage with the permit application.

Sec. 96-107. - General Requirements

A. Confirmation of non-interference with City Safety Communication Networks.
(1) The Network Provider shall provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other City safety communications components.
(2) It shall be the ongoing responsibility of the Network Provider to evaluate, prior to making application for permit and while Network Nodes remain in the Right-of-Way, 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 and any Network Node that causes destructive interference post-installation shall correct such interference or be removed and shall follow all federal regulations regarding interference.
(3) Network Nodes shall not be allowed on City's public safety radio infrastructure.

B. Size Limits.
(1) Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this Chapter.
(2) To the extent authorization is provided by franchise or license, the franchise or license controls.
(3) To the extent authorization is provided by state law which sets out size limits, the size limits in the state law control.
(4) If authorization is provided through a state law with no size limits, or other authorization with no size limits, the size limits of this section shall control.

(5) Unless otherwise provided by state law or Municipal Authorization, License, Franchise or Agreement, the following maximum size limits are applicable (required):

(i) Micro Network Node dimensions – Maximum Length: twenty-four (24) inches; Maximum Width: fifteen (15) inches; Maximum Height: twelve (12) inches.

(ii) Network Node dimensions - Maximum Height: three (3) feet; Maximum Volume: six (6) cubic feet; Maximum width/depth: two (2) feet.

(iii) Pole Height Not to exceed the lesser of ten (10) feet in height above the tallest existing utility pole located within five hundred (500) linear feet of the new pole or fifty-five (55) feet.

(iv) Ground equipment, separate from the pole, may not be higher than three (3) feet six (6) inches from grade, wider than three (3) feet six (6) inches.

(v) When not otherwise set out in this ordinance or in a Municipal Authorization, the size limits shall not be greater than size limits set forth for structures or equipment in SB 1004, 85th Regular Session, where applicable.

(vi) Size limits may be reduced when necessary for public health, safety or welfare.

C. Size limits provided by state law are only applicable for so long as required by state law. If said state law is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Chapter, shall be required and such standards shall be subject to individualized review.

D. Concealment.

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.

E. New Node Support Pole Spacing.

(1) 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, unless a lesser distance is approved by the City Manager.

(2) New poles shall be placed a minimum of 5 feet from a street curb or travel lane and 18 inches from a sidewalk to minimize the potential of being struck by a motor vehicle or bicycle.

(3) New poles shall be placed on breakaway anchor bolt supports or bases to minimize the impact severity to motor vehicles that strike the pole.

F. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, 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 already occupies a footprint of twenty-five (25) square feet or more.

G. Allowed Colors.

Colors shall meet the requirements set out in Section 96-10 "Construction and Maintenance Standards" (A)(19).

H. 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 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 remove the Network Node facilities, Node Support Poles or ground equipment.

I. Ground Equipment.

(1) Ground equipment should be minimal and the least intrusive. 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 two hundred fifty (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 two hundred fifty (250) feet of the boundary line of a Park, unless approved by the City Manager in writing.

(3) 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 three hundred (300) feet already occupies a footprint of twenty-five (25) square feet or more.

(4) Ground equipment shall not be installed in such a manner as to interfere with a sight visibility triangle.

J. Municipal Service Poles:

(1) An Agreement shall be required for all installations on Municipal Service Poles and all such installations shall be in accordance with the Agreement.

(2) Installations on all Service Poles shall have an industry standard individual 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.

(3) Height of attachments:

(a) All attachments on all Service Poles shall be at least eight (8) feet above grade; and

(b) 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 grade;

(c) And meet all applicable requirements of State law and this Chapter.

(4) 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 the agreement with the City. 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;

(c) Have a separate access point than the traffic signal structure;

(d) Shall not puncture or drill into the structure;

(e) Shall not be installed on the mast arm; and

(f) Meet all other requirements of State law and this Chapter.

(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 and must be in accordance with the Agreement with the City. 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

(d) Meet all other requirements of State law and this Chapter.

Sec. 96-108. - Electrical Supply

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.

Network Provider shall not allow or install generators or back-up generators in the Right-of-Way.

Sec. 96-109. - Installation and Inspections

A. Installation

(1) Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, 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.

(2) All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node, Node Support Poles and related ground equipment shall be in compliance with any Agreement with the City as applicable and all applicable laws, ordinances, codes, rules and regulations of the City, County, State, and the United States ("Laws").

B. Standard Pole Load Analysis on Attachments to a Service Pole

All applications for permits to collocate and/or attach to any Service Pole must have included in its permit application a completed industry standard pole load analysis performed and sealed by an engineer licensed by the State of Texas that indicates that the Service Pole to which the network node is to be attached will safely support the load. Such analysis shall also address safety of pole and attachments in regard to wind loads, collision with motor vehicle, supporting weight of the Node and all other pertinent information.

C. Inspections

The City Manager 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 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 shall provide written notice to the Network Provider within five (5) business days of the planned inspection. Network Provider may have a representative present during such inspection.

D. No installations shall be placed on the mast arm of a traffic control signal.

Sec. 96-110. - Requirements in Regard to Removal, Replacement, Maintenance and Repair

A. Removal or Relocation by Network Provider

(1) If the Network Provider removes or relocates a Micro Network Node, Network Node, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than ten (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.

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

(3) Any abandoned or obsolete Micro Network Node, Network Node, Node Support Pole or other related equipment shall be removed in strict accordance with this Chapter and all other applicable ordinances and state law.

(4) Network Provider shall remove Micro Network Node, Network Node, Node Support Pole or related ground equipment when such facilities are Abandoned regardless of whether or not notice is received from the City. Such removal must occur within ninety (90) days from the date of Abandonment, unless additional time is allowed by the City. The Network Provider shall provide advance written notice of such removal which must be received by the City at least two (2) working days prior to the removal, except in case of emergency. Such notice shall specify the location and description of each Micro Network Node, Network Node, Node Support Pole or related ground equipment to be removed.

(5) The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of any City facilities and the Right-of-Way.

B. Removal or Relocation Required for City Project

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 in accordance with Section 96-12 and without cost to the municipality managing the public right-of-way

Pursuant to state law and as a condition for occupancy of the right-of-way, the Network Provider may be required by the City to remove or relocate any of its facilities, including but not limited to, its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way, and Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, whenever the City Manager reasonably determines that the relocation or removal is needed as set out in section 96-12.

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 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, and Network Provider shall, within thirty (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 or Due to Imminent Danger; or for Improper Permitting or Licensing

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 if the City Manager 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 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.

The City Manager shall provide ninety (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.

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 thirty (30) days of receiving the invoice from the City.

D. Restoration

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 ten (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.

E. Network Provider Responsible

Network Provider shall be responsible and liable for the acts and omissions of 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.

Sec. 96-111. - Requirements Upon Abandonment

Upon Abandonment or upon being deemed abandoned, Network Provider has a duty to promptly remove its facilities from the right-of-way. Notice from the City is not a prerequisite to the requirement for removal.

If the Network Provider does not promptly remove its facilities removal procedures as set out in section 96-18 may be followed.

Sec. 96-112. - General Provisions.

A. All requirements of this Chapter, including Article II, shall be met as applicable.

B. No City Allocation of Funds for Removal and Storage

All costs of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article, shall be the responsibility of the Network Provider and the City is not required to expend funds to meet the requirements of the Network Providers. Any funds expended by the City due to an emergency or failure of a Person to abide by these requirements shall be reimbursed to the City.

C. Ownership.

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 prior to any work in the Right-of-Way.

D. Size Limits.

Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this chapter or state law with each application, notice of work to be performed or request for a permit for each location; provided, however, where possible Providers are encouraged to reduce the size of installed facilities.

The size limits in this Chapter are only applicable for so long as required by state law. If Chapter 284 of the Local Government Code is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Article then such standards shall be subject to individualized review.

Sec. 96-113. - Insurance, Indemnity, Bonding and Security Deposits.

Insurance, indemnity, 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 state law.

Sec.96-114. - Design Manual - Updates

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

Reserved 96-115 through 96-150

ARTICLE IV – EXEMPTION PROCESS

Sec. 96-151. - Administrative Hearing – Request for Exemption

A. Should any person utilizing or proposing to utilize the right-of-way desire to request an exemption from a specific standard set forth in this Chapter, and Section 96-26 is not applicable, the person may request an Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption under this Chapter.

B. Any person requesting an exemption from any of the requirements shall file such a request with the City Manager within fifteen (15) calendar days from the time that need for an exemption arose. If an exemption is requested prior to construction, the request should be submitted prior to filing for a permit.

C. An exemption shall only be granted if:

(1) Such exemption is not contrary to the public interest;
(2) Such exemption will not increase the burden on the right-of-way or other right-of-way users;
(3) Such exemption shall not increase the right-of-way management or administrative duties for City staff;

(4) The exemption shall fit within the spirit of this Article; and
(5) The application of the ordinance in the particular circumstances would create an unnecessary hardship.

D. It shall take an affirmative vote of four (4) members of the Board to grant the exemption.

SECTION 4. **That nothing in this Ordinance shall be construed to affect any prosecution currently pending, or any suit or proceeding currently proceeding in any Court, or any rights acquired or any liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance, nor shall any legal right or remedy of any character be lost, impaired or affected by this Ordinance.**

SECTION 5. **That the Code of Ordinances of the City of Bedford, Texas, shall remain in full force and effect, except as amended here.**

SECTION 6. **That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Bedford, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.**

SECTION 7. **That any person violating any provision of this Chapter may be issued a citation and upon conviction thereof, the person shall be deemed guilty of a misdemeanor and punished as provided in subsection 1-9 of the Code of Ordinance of the City of Bedford. Each 24-hour period of violation, and each separate act or condition in violation of this Chapter, shall constitute a separate offense.**

SECTION 8. **It is hereby declared to be the intention of the City Council of the City of Bedford, Texas, that sections, paragraphs, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared legally invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such legal invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City Council of the City of Bedford without the incorporation in this Ordinance of any such legally invalid or unconstitutional, phrase, sentence, paragraph or section.**

SECTION 9. **This ordinance shall take effect immediately from and after its passage as the law in such case provides.**

PRESENTED AND PASSED on this 8th day of August 2017, by a vote of 6 ayes, 1 nays and 0 abstentions, at a regular meeting of the City Council of the City of Bedford, Texas.

ATTEST: **Jim Griffin, Mayor**

Michael Wells, City Secretary

APPROVED AS TO FORM:

_____

Stan Lowry, City Attorney