

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY ATTORNEY TO NEGOTIATE AND DRAFT MUNICIPALLY OWNED UTILITY POLE WIRELESS NETWORK NODE COLLOCATION ATTACHMENT LICENSE AGREEMENT WITH NETWORK PROVIDERS AS NEEDED; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE SAID AGREEMENTS AS NEEDED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Network Providers may Collocate Attachments to and on the City's Municipally Owned Utility ("MOU") Poles that are in the Public Right-of-Way to the extent allowed by Chapter 284, Tex. Local Gov't Code; and

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

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

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

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

WHEREAS, Chapter 284, Section 284.101 (a)-(b), et al, sets forth the conditions to access and Collocation on the City's MOU Poles that are in the Public Right-of-Way of the Network Nodes to include compliance with the applicable City laws, the City's Design Manual, and the Chapter 284 limits to the height, width, safety and aesthetic requirements of Network Nodes; and

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

WHEREAS, the Licensee's non-exclusive use at locations in its Public Right-of-Way, will be subject to the terms and conditions set forth in a Municipally Owned Utility Pole Wireless Network Node Collocation Attachment License Agreement, and pursuant to Permits issued by the City Engineer; and

WHEREAS, the terms "Collocate", "Collocation", "Attachment", "Municipally Owned Utility Poles", "Public Right-of-Way", "Network Nodes", "Design Manual" and "Permits" are used as the same are defined in Ch. 284, Tex. Local Gov't Code; and

WHEREAS, a Municipally Owned Pole Wireless Network Node Collocation Attachment License Agreement is in furtherance of the City's authority under both state and federal law to manage the Public Right-of-Way to ensure the health, safety, and welfare of the public; NOW THEREFORE

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That the findings set forth above are incorporated as if fully set forth herein.

SECTION 2. That the City Attorney is authorized, with appropriate technical direction and guidance from Denton Municipal Electric staff, to negotiate with Network Providers, draft, and approve a Municipally Owned Utility Pole Wireless Network Node Collocation Attachment License Agreement as required with for use with Attachments Collocated to and on the City's MOU Poles as allowed under Chapter 284, Tex. Local Gov't Code.

SECTION 3. That the compensation due to the City under a Municipally Owned Utility Pole Wireless Network Node Collocation Attachment License Agreement will be established by separate ordinance.

SECTION 4. That the City Manager, or designee, is authorized to execute and deliver on behalf of the City, Municipally Owned Utility Pole Wireless Network Node Collocation Attachment License Agreement" between the City of Denton and Network Providers desiring to Collate Attachments to and on the City's Municipally Owned Utility Pole as allowed under Chapter 284, Tex. Local Gov't Code and in compliance with applicable City laws, the City's Design Manual, and the Chapter 284 limits to the height, width, safety and aesthetic requirements of Network Nodes.

SECTION 5. That this ordinance shall become effective September 1, 2017.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

By:  \_\_\_\_\_