

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON ADOPTING AND APPROVING A DESIGN MANUAL IN ACCORDANCE WITH CHAPTER. 284, *DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY*, TEX. LOCAL GOV'T CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 284, Tex. Local Gov't Code, allows Network Providers to deploy Network Nodes in the Public Right-of-Way; 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

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 284.108, allows the City to adopt a Design Manual for the installation and construction of Network Nodes and new Node Support Poles in the Public Right-of-Way that includes additional installation and construction details that do not conflict with Chapter 284.
; and

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

WHEREAS, the City's adoption of a Design Manual 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 Council approves and adopts the attached "City of Denton, Texas Wireless Service (Small Cell/DAS) Design Manual" as allowed under Chapter 284, Tex. Local Gov't Code.

SECTION 3. That this ordinance shall become effective September 1, 2017.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

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

By:  _____

CITY OF DENTON, TEXAS
WIRELESS SERVICES (SMALL CELL/DAS) DESIGN MANUAL
(Version 1; Approved 08/22/2017; Effective 09012017)

A. General Provisions.

1. Applicability.

a. The provisions of this ordinance apply to any sitings, installations, and collocations in, on, over, or under the Public Rights-of-Way of Network Nodes, Node Support Poles, Micro Network Nodes, Distributed Antenna Systems, Transport Facilities, microwave communications, or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Tex. Loc. Gov't Code, Chapter 284, or pursuant to an agreement with the City, or installed as may otherwise be allowed by law.

b. Providers shall comply with all Applicable Codes of the City pertaining to the occupancy and use of Public Right-of-Way, unless such provisions conflict with this Ordinance, in which case this Ordinance prevails.

c. Providers shall adhere to the requirements found in this ordinance for the placement of their facilities within the Public Right-of-Way.

d. Any and all facilities selected for the installation of Provider's Wireless Facilities shall not be considered "personal wireless service facilities" as that term is defined at 47 U.S.C. §332(c)(7)(C)(ii), or a "base station" as that term is defined at 47 CFR § 24.5. The limitations applicable to local governments with regard to the placement, construction, and Modification of "personal wireless service facilities" under 47 U.S.C. § 332(c)(7)(B) shall not apply to the City with regard to Locations selected for Wireless Facilities in the Public Right-of-Way. Nor shall any federal regulations limiting the authority of local governments with regard to the placement, construction, and Modification of "base stations" apply to the City with regard to Wireless Facilities located in the Public Right-of-Way.

2. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon and its derivatives shall mean, with regard to Wireless Facilities and Transport Facilities, and all supporting equipment installed in the City's Public Right-of-Way (including by way of example but not limited to: Poles, wires, conduits, manholes, handholes, cuts, Network Nodes, Node Support Poles, Ground Equipment, or any portion thereof) that have been left by a Provider in an unused or non-functioning condition for more than 120 consecutive Days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facility, or portion thereof, is still in active use.

Affiliate shall mean each person or entity that falls into one or more of the following categories: (a) a person or entity having, directly or indirectly, a controlling interest in a Provider; (b) a person or entity in which Provider has, directly or indirectly, a controlling interest; or (c) a person or entity that directly or indirectly is controlled by a third party that also directly or indirectly controls a Provider.

Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

Applicable Codes shall mean (i) all applicable City of Denton Code of Ordinances provisions, Denton Development Code provisions, policies, and guidelines; (ii) all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around Public Right-of-Way and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the Texas Health and Safety Code, Chapter 752, the rules and regulations of the Occupational Safety and Health Act (“OSHA”); and (iii) any applicable lawful rules, requirements or orders now in effect or hereafter issued by the City or other authority having jurisdiction.

City shall mean the City of Denton, a Texas home-rule municipal corporation.

Concealment or *Camouflage* shall mean any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that it blends into the surrounding environment and is visually unobtrusive. A Concealed or Camouflaged Wireless Facility or Pole includes any Wireless Facility or Pole approved by the City as conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to, a Wireless Facility or Pole that is hidden beneath a facade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Chapter 284 and *Ch. 284, Tex. Local Gov’t Code* shall mean Texas Local Government Code, Chapter 284, and as amended.

Collocate and *Collocation* shall mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in the Public Right-of-Way on or adjacent to a Pole.

Communication Space shall mean that space of the MOU Pole containing cable attachments, telecommunication attachments, and other communication cables and equipment. The *Communication Space* begins no less than forty inches (40”) below the electric neutral.

Communication Workers Safety Zone shall mean the safety zone or “neutral” space on an MOU Pole between the lowest electrical supply conductor or equipment and the highest communication cables or equipment. The *Communication Workers Safety Zone* space begins no less than forty inches (40”) below the electric neutral.

Days shall mean calendar days unless otherwise specified.

Decorative Pole shall mean any 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 Applicable Codes.

Denton Municipal Electric or *DME* shall mean the City’s municipally owned electric utility.

Design District shall mean an area that is zoned or otherwise designated by the City, and for which the City maintains and enforces unique design and aesthetic standards.

Disaster emergency, or *disaster*, or *emergency* shall mean an imminent, impending, or actual natural or human-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 the City, state, or federal governmental authorities.

Distributed Antenna System or *DAS* shall mean a type of Network Node.

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

Electric Supply Zone shall mean that space of an MOU Pole reserved for electric supply facilities. The *Electric Supply Zone* may include separate facilities operating at different voltages; for safety reasons, the highest voltages are located uppermost on the MOU Pole. Only Qualified Electrical Workers are allowed to in or above the *Electric Supply Zone*.

Ground Equipment shall mean any part of a Wireless Facility or associated equipment that is located on the surface of the ground and, if included in an approved Permit application or otherwise approved by the City in writing, an incidental structure to support the Wireless Facility.

Highway Right-of-Way shall mean 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 Applicable Codes, state or federal law.

License Agreement shall mean the Chapter 284 Municipally Owned Utility Pole Wireless Network Node Collocation Agreement or the Chapter 284 Service Pole Wireless Network Node Collocation Agreement.

Location shall mean the City-approved and lawfully permitted location for the Network Node or Node Support Pole.

Macro Tower shall mean a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284 and that supports or is capable of supporting antennas.

Micro Network Node shall mean a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Modification or *Modify* shall mean any work in the Public Right-of-Way, or alteration of a Wireless Facility that is not substantially similar in size or is a change in the Wireless Facility's location in the Public Right-of-Way or its physical position on the Pole, except those alterations or changes that are excepted from requiring a Permit under Chapter 284, which do not constitute Modifications hereunder.

Municipal Park shall mean an area that is zoned or otherwise designated by City ordinance or has been dedicated to the City for use as a public park for the purpose of recreational activity.

Municipally-Owned Utility Pole or *MOU Pole* shall mean a Utility Pole owned by the City and operated by its municipally-owned electric utility, as defined by Tex. Util. Code, § 11.003, and located in the Public Right-of-Way.

Network Node shall mean equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

- (1) Includes:
 - (a) Equipment associated with wireless communications;
 - (b) A radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (c) Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (2) Does not include:
 - (a) An electric generator;
 - (b) A Pole; or
 - (c) A Macro Tower.

Network Provider shall mean:

- (1) A Wireless Service provider; or
- (2) 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:
 - (a) Network Nodes; or
 - (b) Node Support Poles or any other structure that supports or is capable of supporting a Network Node.

Node Support Pole shall mean a pole installed by a Network Provider for the primary purpose of supporting a Network Node.

Permit shall mean the City's written authorization for the use of Public Right-of-Way or collocation on a Pole for a Network Provider to perform an action or initiate, continue, or complete a project pursuant to the requirements of this Ordinance. A Permit shall include an excavation permit.

Pole shall mean a Service Pole, Municipally-Owned Utility Pole, Node Support Pole, or Utility Pole.

Pole-Top Zone shall mean the space located at the top of the MOU Pole above the Electric Supply Zone of the MOU Pole.

Post-Installation Inspection shall mean the inspection of an MOU Pole to determine and verify the Make-Ready Wireless Construction, and all other Make-Ready work, including the installation of the permitted attachment was made in accordance with the generally applicable engineering standards, Applicable Codes, Design Manual, and all other requirements of the Permit.

Pre-Permit Survey shall mean all work or operations required by Applicable Codes or the City to determine whether the proposed location of a Network Node has the structural and spatial ability to accommodate Network Nodes and related equipment. Such work includes, but is not limited to, field

inspection, loading calculations, and administrative processing. The Pre-Permit Survey shall be coordinated with the City and include the Provider's professional engineer.

Private Easement shall mean an Easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as "Network Provider."

Public Right-of-Way or Right-of-Way shall mean the area on, below, or above a public roadway, highway, Street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- (1) A Private Easement; or
- (2) The airwaves above a Public Right-of-Way with regard to wireless telecommunications.

Qualified Electrical Worker shall mean specially trained lineman with the skillset to work with and around electrical wires in or above the *Electric Supply Space*. A *Qualified Electrical Worker* must possess a Journeyman Lineman or higher card through a United States Department of Labor approved Lineman Apprentice program.

Safety Briefing shall mean a document or presentation materials prepared by a *Provider* and provided to *DME* regarding how to work safely near and/or around the *Provider's Wireless Facilities*. A *Safety Briefing* must be submitted with a Pre-Certification Equipment Form and pre-approved by the City electric department before distributing or otherwise making available to City electric department employees or contractors.

School shall mean an educational institution that offers a course of instruction for students in one or more grades from kindergarten through grade 12.

Service Pole shall mean a pole, other than a Municipally Owned Utility Pole, owned or operated by the City and located in a Public Right-of-Way, including:

- (1) A pole that supports traffic control functions;
- (2) A structure for signage;
- (3) A Pole that supports lighting, other than a Decorative Pole; and
- (4) A pole or similar structure owned or operated by the City and supporting only Network Nodes.

Site License shall mean a *DME* map document authorizing a *Provider's* non-exclusive right of attachment and ongoing use of specific *MOU Poles* or *Streetlight Pole*.

Small Cell is included as a type of Network Node.

Street shall mean only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the back of the street curb to the back of the opposite street curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A Street is generally part of, but smaller in width than the width of, the entire Right-of-Way. A Right-of-Way may include sidewalks and public utilities, but a Street does not. A Street does not include the sidewalk, if present at the time of a permit application or if added later.

Streetlight Pole shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for street lighting purposes, owned by the City and operated by DME, that is capable of supporting Network Nodes.

Stub Pole shall mean an MOU Pole that has had a portion of its upper structure removed so that only a limited amount remains in place. This is usually done when an electric utility has removed its facilities in the *Electric Supply Zone* but telecommunication facilities remain on the pole.

Supply Cable shall mean the jacketed multiple conductor that provides electric energy to a load.

Supply Space shall mean *Electric Supply Zone*.

TAS shall mean Texas Accessibility Standards.

Topped-Off Pole shall mean *Stub Pole*.

Traffic Control Device shall mean all signs, signals, markings, or devices placed or erected by the City or a public body having jurisdiction for the purpose of regulating, warning, or guiding traffic.

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

Transport Facility shall mean each transmission path physically within a Public Right-of-Way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

Underground Utility District shall mean 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 City ordinances, City zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing above-ground structures in a Public Right-of-Way.

Utility Pole shall mean a pole that provides:

- (1) Electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (2) Services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

Wireless Service shall mean 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 shall mean a person or entity that provides Wireless Service to the public.

Wireless Facility or *Wireless Facilities* shall mean Micro Network Nodes, Network Nodes, and Node Support Poles, as defined herein and in Chapter 284.

B. Applications and Permitting.

A. Access to Public Right-of-Way.

- a. Subject to the provisions of this ordinance, the City will issue a Permits to Providers authorizing Providers to install and maintain Wireless Facilities and Transport Facilities in or on Public Right-of-Way in accordance with Chapter 284. The locations at which Provider's Wireless Facilities and Transport Facilities may be permitted, and the

size and appearance of such Wireless Facilities, shall be determined in accordance with this ordinance. If the requested Location is to Collocate a Network Node on a Service Pole, Municipally Owned Utility Pole, or Utility Pole, Provider must also, prior to making application for such Location, enter into a License Agreement with the City for such Collocation.

b. The City will issue a Permit(s) to Provider only when the City reasonably determines, in its sole judgment, that (i) Provider meets all requirements set forth in this ordinance, and (ii) such Permit(s) comply with all Applicable Codes.

c. No use, however lengthy, of any of Public Right-of-Way, and no payment of any fees or charges required under this ordinance, shall create or vest in Provider any easement or other ownership or property right of any nature in any portion of the Public Right-of-Way. After issuance of any Permit, Provider shall be and remain a mere licensee. Neither this ordinance, nor any Permit granted under this ordinance, shall constitute an assignment of any of the City's rights to the Public Right-of-Way.

d. No part of Provider's Wireless Facilities or Transport Facilities or other equipment constructed, Modified, or erected, or placed on Public Right-of-Way will become, or be considered by the City as being affixed to or a part of, the Public Right-of-Way. All portions of Provider's Wireless Facilities and Transport Facilities and other equipment constructed, Modified, erected, or placed by Provider on Public Right-of-Way will be and remain the property of Provider and may be removed by Provider at any time.

e. Nothing in this ordinance or in a Permit granted hereunder shall be construed as granting Provider any right to attach Provider's Wireless Facilities or Transport Facilities at any specific location or facility or to compel the City to grant Provider the right to attach at any specific location or facility.

f. This ordinance does not in any way limit the City's right to locate, operate, maintain or remove Service Poles, MOU Poles, or other City equipment or property in the manner that the City deems appropriate.

g. Provider is obligated to obtain all necessary certification, permitting, and franchising from federal, state and local authorities, if required, prior to making any installations of Wireless Facilities or Transport Facilities.

h. Nothing in this ordinance shall be construed to require the City to install, retain, extend, or maintain any Service Poles, MOU Poles, or other City equipment or property for use by the Provider when such Service Poles, MOU Poles, or other City equipment or property are not needed for the City's own requirements.

i. Nothing in this ordinance shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding a Service Pole, MOU Pole, or other City equipment or property into which the City has previously entered, or may enter in the future, with other entities, including, but not limited to, agreements or arrangements for the removal of Wireless Facilities.

j. Nothing in this ordinance or in any Permit granted hereunder shall be construed to grant Provider the authority to lease, grant, or otherwise assign any rights under its Permit to any other party without the written consent of the City.

k. In the event the City determines to deny the use by Provider of any particular Service Poles, MOU Poles, or other City equipment or property or any particular location in the Public Right-of-Way, such denial shall not be construed to be a prohibition on, or to have the effect of prohibiting, the provision of Wireless Services. Any such denial by the City shall be undertaken in its capacity as proprietor of the Public Right-of-Way, and not in its regulatory capacity.

l. Any Permit granted under this ordinance is limited to the uses specifically authorized in the Permit and any other use shall be considered a material breach of this ordinance. Nothing in this ordinance or in any Permit granted hereunder shall be construed to require the City to allow Provider to use the Public Right-of-Way after the termination of the applicable Permit.

2. Fees and Charges.

a. Provider shall pay the City the following Permit application fees:

i. Network Nodes - An application fee in an amount as set forth in the City's fee ordinance for up to five (5) Network Nodes in each application, and an additional amount as set forth in the City's fee ordinance for each additional Network Node in the application (a maximum of thirty (30) Network Nodes may be included in each application).

ii. Node Support Poles - An application fee in an amount as set forth in the City's fee ordinance for each pole.

iii. Transport Facility - An application fee in an amount as set forth in the City's fee ordinance for up to five (5) Network Nodes in each application, and an additional amount as set forth in the City's Ch. 284 fee ordinance for each additional Network Node in the application (a maximum of thirty (30) Network Nodes may be included in each application).

b. Provider shall pay the City the following recurring fees:

i. Network Nodes - An annual Network Node site rental fee in an amount as set forth in the City's Ch. 284 fee ordinance per Network Node site, with an annual adjustment as provided herein.

ii. Transport Facility - A monthly Transport Facility rental fee in an amount as set forth in the City's Ch. 284 fee ordinance for each Network Node site, not to exceed the Provider's monthly aggregate per-node compensation to the City. The Network Provider bears the burden to establish that the entity paying the City the Transport Facility rental is the same as, or an Affiliate of, the entity paying the Network Node site rental rate.

iii. Collocation of Network Nodes on Service Poles and MOU Poles
- An annual fee in an amount as set forth in the City's Ch. 284 fee ordinance per Service Pole or MOU Pole.

iv. All recurring fees are payable in advance and are due upon approval of the Permit(s) by the City; no Permit shall become effective until the fee has been paid. Initial amounts shall be pro-rated, based upon an annual due date of January 1 of each year.

(a) For example, a Network Node Permit approved by the City in August shall be effective upon payment in advance by the Provider of 5/12 of the annual rental rate. Thereafter, all payments of annually-recurring fees are due to the City by January 1 for the following calendar year.

(b) For example, a Transport Facility Permit approved by the City in August shall be effective upon payment by the Provider of five months of the monthly rental amount. Thereafter, payments for twelve months at a time are due to the City by January 1 for the following twelve months.

v. Provider shall maintain and submit annually to the City with each payment to the City, an inventory of Provider's Network Nodes, Node Support Poles, Node Support Poles connected by Transport Facilities, and Collocated Network Nodes. This information shall include complete and accurate GIS location information, maps, plans, equipment inventories, and other records related to Provider's Facilities. An inventory shall be effective from January 1 of each year. The City reserves the right to compare the information contained on the inventory to any actual field inspection or survey conducted mutually. In the event that Provider fails to submit an inventory, Provider shall pay the City, in addition to the monthly- or annually-recurring fees, all actual costs associated with the City's performance of an inventory of Provider's Facilities.

(a) If either Provider or the City subsequently discovers that Provider has failed to pay the entire or correct amount of compensation due, the correct amount shall be paid by Provider within thirty (30) Days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded to Provider by the City within thirty (30) Days of such determination or offset against the next payment due from Provider. Acceptance by either Provider or the City of any payment due under this section shall not be deemed to be a waiver by either of any claim of violation of this ordinance, nor shall the acceptance by either of any such payments preclude either from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this section shall be deemed a waiver by either Provider or the City of its rights under law or equity.

(b) Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the

Public Utility Commission of Texas in accordance with the Texas Utilities Code, Section 183.003, as amended for the time period involved.

(c) The compensation payable to the City hereunder shall not be offset by any payment by Provider to the City relating to ad valorem taxes.

vi. The Network Node site rental fee set forth herein shall be adjusted on an annual basis, by an amount equal to one-half of the annual change, if any, in the Consumer Price Index. For purposes of this section, Consumer Price Index shall mean the annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. The adjusted fee will be effective sixty (60) Days after the City provides notice to Providers of the new rate.

vii. The recurring fees set forth herein shall be exclusive of, and in addition to, all ad valorem taxes, special assessment for municipal improvements, and other lawful obligations of the Provider to the City.

viii. When the City at its own expense has removed or remediated Provider's Wireless Facilities or Transport Facilities or Provider is otherwise required to reimburse the City hereunder, the Provider shall remit payment to the City within 30 Days of the date of the invoice.

ix. Upon Provider's termination of the use of any Service Pole, MOU Pole, or Public Right-of-Way in accordance with the terms of a Permit and this ordinance, and Provider peaceably surrendering the Service Pole, MOU Pole, or Public Right-of-Way to the City in the same condition it was in on the date the Permit(s) was granted, excepting ordinary wear and tear, there will be no compensation due to the City by Provider for such location.

C. Installation in Right-of-Way.

1. General Requirements.

a. Wireless 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 are visually minimized to the extent possible.

b. Wireless Facilities must conform to the City's aesthetic or design standards for the proposed Location, if any, unless otherwise approved by the City.

c. Separation.

i. In order to minimize negative visual impact to the surrounding area, the hazard of Poles adjacent to roadways, and the effect on property values, the City may deny a Permit for a new Node Support Pole if the requested location is within 45 linear feet of a Street intersection or 300 linear feet per block face of existing Utility Pole or Node Support Pole.

ii. In residential zoning districts, Network Nodes and Node Support Poles shall not be located without the City's written consent if the Public Right-of-Way is adjacent to a Street or thoroughfare that is not more than 50 feet wide and adjacent to single-family residential lots or other multi-family residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

iii. In non-residential zoning districts, Wireless Facilities shall be located between tenant spaces, storefront bays, or adjoining properties where their shared property lines intersect the Public Right-of-Way.

d. Provider shall comply with and observe all applicable City, state, and federal historic preservation laws and requirements.

e. When a Permit is issued Provider shall install and maintain its Wireless Facilities and Transport Facilities, and all Ground Equipment, in accordance with the City's requirements and specifications. All of Provider's Wireless Facilities, Transport Facilities, and Ground Equipment must comply with all Applicable Codes.

f. Provider shall be responsible for the installation and maintenance of its Wireless Facilities, Transport Facilities, and related Ground Equipment. Provider shall install such facilities in a good and workmanlike manner and in accordance with the requirements promulgated by the City, as such may be amended from time to time. Provider's work shall be subject to the regulation, control, and direction of the City. All work done in connection with the installation, operation, maintenance, repair, Modification, and/or replacement of the Wireless Facilities, Transport Facilities, and related Ground Equipment shall be in compliance with all applicable City, state, and federal laws, ordinances, codes, rules, and regulations.

g. Primary Use. The City shall not grant Permits to locate Wireless Facilities on Service Poles or other City facilities or equipment that, in the City's sole determination, will adversely impact the primary use of the Service Pole, MOU Pole, or other City facility or equipment.

h. Visual Clutter. The City may not grant Permits to Wireless Facilities that, in the City's sole determination, will contribute to visual clutter, taking into account the proximity of existing Wireless Facilities and the surrounding land use. There shall not be more than one Network Node on any one Pole, unless otherwise approved, in writing, by the City.

i. Wireless Facilities and Ground Equipment shall not impede pedestrian or vehicular traffic or render the Public Right-of-Way non-compliant with Applicable Codes, including the Americans with Disabilities Act.

j. Height. All Network Node and Node Support Poles shall have a maximum height of thirty-five (35) feet in residential zoning districts, and, if allowed, Historic Districts and Design Districts. In all other districts, a Node Support Pole, modified Utility Pole, Service Pole, or MOU Pole shall not exceed the height limitations of Chapter 284, Sec. 284.103.

2. Placement Preference.

a. General Guidelines on Placement. In accordance with Chapter 284, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

- i. Obstruct, impede, or hinder the usual travel or public safety on a Public Right-of-Way;
- ii. Obstruct the legal use of a Public Right-of-Way by other utility providers;
- iii. Violate nondiscriminatory Applicable Codes;
- iv. Violate or conflict with the City's ordinances regulating the use and occupancy of Public Rights-of-Way or this ordinance; or
- v. Violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

b. Order for Installation. The order for installation of Network Node attachments to existing facilities and new Node Support Poles is as follows:

- i. Existing telephone or electric lines between existing Utility Poles, including MOU Poles. Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing Utility Poles (electric poles or telephone poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles, Service Poles, or MOU Poles.
- ii. Existing Utility Poles (electric poles or telephone poles) shall be the preferred support facility for Network Nodes and related ground equipment.
- iii. Service Poles:
 - (a) Non-Decorative Poles with a height of more than 20 feet, outside of Historic District and Design District.
 - (b) Wireless Facilities shall not be placed on Service Poles supporting Traffic Control Devices, Traffic Signals, or any structure supporting a Traffic Control Device or Traffic Signal, unless the City determines that such installation will not interfere with the integrity of the facility or the safety of the public. Any such installation allowed by the City will be in accordance with a separate agreement with the City.
 - (c) Attachment to Service Poles used for street signage is discouraged.
- iv. New Node Support Poles shall be the least preferred type of allowed facility for attachment of Network Nodes.
- v. Ground Equipment shall be minimal and the least intrusive design and placement as possible.

3. Historic District.

a. Historic District(s) are areas within the City that have been, or shall be in the future, designated by zoning or otherwise as Historic Districts, in which unique design and aesthetic standards are maintained and enforced by the City. Providers shall comply with and observe all applicable City, state, and federal historic preservation laws and requirements.

b. Wireless Facilities proposed within a Historic District shall be subject to review by the Historic Preservation Officer, or by the Director of Development Services Department, or designee, should the Historic Preservation Officer not be available, in order to satisfy that the installations are compatible with the regulations applicable to Historic District.

c. As a condition for approval of Permits for Network Nodes or Node Support Poles in Historic Districts:

i. Reasonable design or Concealment measures for such facilities are required. Therefore, with any request for installations in these areas, Provider shall include proposed Concealment measures in the Permit application. Thereafter, Provider shall implement the City-approved design concepts, and the use of Camouflage or stealth materials as necessary in order to achieve compliance with Historic District review, including following the design guidelines for the City's Historic Districts and other applicable regulations.

ii. A Certificate of Appropriateness as defined by the City of Denton Development Code must be obtained. Certificates of Appropriateness shall be approved by the Historic Preservation Officer, or by the Director of Development Services Department or designee should the Historic Preservation Officer not be available to review. It will be at the discretion of the Historic Preservation Officer as to whether applications will be administratively reviewed or subject to the review of the Historic Landmark Commission.

d. Specific limitations applicable to Historic Districts

i. Colors.

a) Colors shall be in accordance with the applicable portions of the City of Denton Historic Preservation Ordinances pertaining to existing Historic or Conservation Districts as well as the Design Guidelines used by the City with respect to the Main Street District which encompasses the downtown National Registered District and other Design Districts.

b) Colors shall be approved by the Historic Preservation Officer or the Director of Development Services Department or designee.

ii. Stealth.

a) An antenna may be mounted flush to the exterior of a building if it is painted and integrated into the overall architectural design. Antennas may also be totally enclosed within a flagpole.

b) Stealth designs are exempt from spacing requirements.

iii. Signs. All commercial signs, flags, lights and attachments, other than those required for emergency identification, communications operations, structural stability, or as required for flight visibility by the FAA and FCC shall be prohibited on any antenna or antenna support structure. However, lights may remain or be replaced on light standards that are altered or replaced to serve as antenna support structures.

iv. Ground Enclosures and Equipment Storage.

a) Ground equipment, support buildings and equipment storage areas or buildings in Historic, Conservation, Main Street and State and National Districts must meet the Design Standards specified for auxiliary buildings in the historic and conservation districts and the design for these types of enclosures and support buildings must be approved by the Historic Preservation Officer or the Director of Development Services Department or designee.

b) Ground Enclosures and Equipment Storage must be of a neutral color and use exterior building materials that are compatible with surrounding structures.

c) Support buildings and equipment storage areas must be screened by an evergreen landscape screen with an initial planting size of 5 gallons and 4 feet in height, with an ultimate height of 6 feet or a solid masonry fence 6 feet in height. Landscaping must be irrigated and maintained in a living, growing condition. Wooden fences are prohibited and wrought iron or chain link may only be used in conjunction with a landscape screen.

4. Design District.

a. Design Districts are areas within the City that have been, or shall be in the future, designated by zoning or otherwise as Design Districts, in which unique design and aesthetic standards are maintained and enforced by the City. Providers shall comply with and observe all applicable City, state, and federal historic preservation laws and requirements.

b. Wireless Facilities proposed within a Design District shall be subject to review by the City Engineer or designee and Historic Preservation Officer or the Director

of Development Services Department or designee in order to satisfy that the installations are compatible with the regulations applicable to Design District.

i. As a condition for approval of Permits for Network Nodes or Node Support Poles in Design Districts, the City shall require reasonable design or Concealment measures for such facilities. Therefore, with any request for installations in these areas, Provider shall include proposed Concealment measures in the Permit application. Thereafter, Provider shall implement the City-approved design concepts, and the use of Camouflage or stealth materials as necessary in order to achieve compliance with Design District review, including following the design guidelines for the City's Design Districts and other applicable regulations.

ii. Prior to submitting an application for a Permit for a Wireless Facility in a Design District, Provider shall meet with the City Engineer or designee and Historic Preservation Officer or the Director of Development Services Department or designee to discuss any potential design modifications appropriate for the installation.

5. School Zone Lights. Wireless Facilities will not be allowed at locations that interfere with school zone flashing lights. The interference to be avoided is structural, radio frequency, and visual.

6. Pedestrian Impacts.

a. The City shall not grant Permits for Wireless Facilities that, in the City's sole determination, will adversely impact pedestrian movement or will be in violation of the Americans with Disabilities Act.

b. A minimum five (5) foot clear path of travel will be provided at all times.

c. Network Nodes on new or existing Poles must be installed at least eight (8) feet above the ground.

d. If the Network Node attachment is projecting toward the Street, it must be installed no less than sixteen (16) feet above the ground for the safety and protection of the public and vehicular traffic.

e. No protrusion from the outer circumference of the existing structure or Pole shall be more than two (2) feet.

7. New Node Support Poles.

a. Node Support Poles shall be set back a minimum of twenty (20) feet from a Traffic Signal Pole, and set back a minimum of fifteen (15) feet from any pedestrian ramp. The City may require a greater setback from these and other fixtures in the Public Right-of-Way to ensure proper sight lines for public safety purposes.

b. Node Support Poles and accessory equipment shall be located at least ten (10) feet from a driveway and at least twelve (12) feet from the center of existing trees.

8. Decorative Poles. All Decorative Poles are operated and maintained by DME. No Wireless Facilities of any type are allowed on Decorative Poles regardless of location.

9. Streetlight Poles. All Streetlight Poles are operated and maintained by DME.

10. Residential Areas and Municipal Parks.

a. Providers shall not be allowed, without the written consent of the City, to install a Network Node on an existing Pole in a Public Right-of-Way located in or adjacent to a Street or thoroughfare that is:

i. Not more than fifty (50) feet wide, and

ii. Adjacent to single-family residential lots or other multi-family residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

b. As a general rule, new Node Support Poles will not be permitted in a Public Right-of-Way that is in a Municipal Park or that is adjacent to a Street or thoroughfare as described herein.

c. The City may, but is not required to, issue a Permit for the installation of a Network Node or Node Support Pole in areas described in this section on terms that are discretionary and nondiscriminatory, and that have the effect of minimizing interference with the aesthetic qualities of such areas, and that are in keeping with this ordinance.

d. If the City approves a Permit for the installation of Network Nodes or Node Support Poles in the areas described this section, Provider remains under an obligation to determine whether any private deed restrictions or other private restrictions are in place in the area, and to comply with same.

10. Undergrounding Requirements.

a. Areas within the City may be designated from time to time by the City as Underground Utility Districts in accordance with filed plats, and/or in connection with the conversion of overhead to underground areas, as may be allowed by law.

b. Provider will comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a Public Right-of-Way without first obtaining zoning or land use approval.

c. In Underground Utility Districts as established by the City, Provider shall neither allow nor install Transport Facilities or any other overhead Facilities serving to connect Provider's Network Nodes. In all areas where overhead telecommunications or utility lines are, or are planned to be, buried below ground as part of a City project, all Transport Facilities or any other Wireless Facilities serving to connect Provider's Network Nodes, including ground equipment, shall also be buried below ground.

d. If a Permitted Location subsequently becomes part of an Underground Utility District, Provider's Permit will be automatically revoked within 90 Days after such designation, with removal of Provider's Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 Days of such

designation, or as otherwise reasonably allowed by the City for the transition of overhead facilities.

11. Electrical Supply. Provider shall be responsible for obtaining any required electrical power service to the Wireless Facility. The City shall not be liable to the Provider for stoppages or shortages of electrical power furnished to the Wireless Facility, including, without limitation, stoppages or shortages caused by any act, omission, or requirement of the utility serving the Wireless Facility or the act or omission of any other tenant or licensee of a City facility, or for any other cause beyond the control of the City. Provider shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.

12. Traffic Signals and Street Signage.

a. If allowed by the City, installations on Traffic Signals or Street Signage must not interfere with the integrity of same or the safety of the public.

b. Any installation allowed by the City will be in accordance with a separate agreement with the City.

c. Network Nodes installed on any Traffic Signal or Street Signage structures shall be encased in a conduit separate from the Traffic Light or Street Signage elements, have an electric power connection separate from the Traffic Signal or Street Signage structure, and have an access point separate from the Traffic Signal or Street Signage structure.

13. Generators. Generators or back-up generators shall not be installed in the Public Right-of-Way. Permits granted to Provider for Network Nodes or Transport Facilities do not include authorization for the installation of generators or back-up generators in the Public Right-of-Way.

14. Ground Equipment.

a. In addition to the size restrictions provided in Chapter 284, § 284.003(a)(4), Ground Equipment near Street corners and intersections should be minimal and the least intrusive. Ground Equipment may not be installed within 250 feet of a Street corner or a Street intersection. This set-back is for the purposes of minimizing any obstruction, impediment, or hindrance to vehicular traffic and public safety, maximizing line-of-sight in order to protect the safety of vehicular and pedestrian traffic at Street corners and intersections, and thereby minimizing hazards at those locations.

b. Ground Equipment near Municipal Parks. For the safety of Municipal Park patrons, particularly small children, and to allow full line-of-sight near Municipal Park property, the Network Provider shall not install Ground Equipment in a Public Right-of-Way that is within a Municipal Park or within 250 feet of the boundary line of a Municipal Park, unless approved by the City in writing.

c. Ground Equipment density. In order to enhance the safety requirements of line-of-sight of pedestrians, particularly small children, the City may deny a request for a proposed Location for Ground Equipment where existing Ground Equipment within 300 feet of the proposed Location, already occupies a footprint of 25 square feet, or more.

15. Equipment Dimensions. With each application and with each request for a Permit, and for each requested Location, Provider shall provide detailed drawings with calculations to show strict conformity to the size limitations as set forth herein and in Chapter 284 for Micro Network Nodes, Network Nodes, and Node Support Poles.

16. Non-interference.

a. To the extent not inconsistent with Chapter 284, Provider's Network Nodes shall not cause harmful interference to the City's public service radio frequency, wireless network, SCADA operations, or communications operations ("City Operations"), or to third-parties' Network Nodes or similar third-party equipment in the Public Right-of-Way or adjacent City property ("Protected Equipment"). If Provider's Network Node interferes with City Operations, then Provider shall immediately cease operation of the Network Node causing said interference upon receiving notice from the City and refrain from operating until Provider has eliminated the interference. If after notice Provider continues to operate a Network Node that causes interference with City Operations, such Network Node may be deemed unauthorized and subject to the remediation and termination provisions of this Ordinance. If Provider's Network Node interferes with Protected Equipment, then Provider shall take the steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the City. If Provider is unable to resolve the interference issue within this timeframe, it will voluntarily power down the Network Node causing the interference, except for intermittent testing until such time as the interference is remedied.

b. Following installation or Modification of a Network Node, the City may require Provider to test the Network Node's radio frequency and other functions to confirm that it does not interfere with City Operations or Protected Equipment. If, after notice, Provider continues to operate a Wireless Facility that causes interference with City Operations, such Wireless Facility may be deemed unauthorized and subject to the provisions of this Ordinance.

17. Tree Maintenance. Provider and its contractors and agents shall obtain written permission from the City before trimming trees hanging over its Wireless Facilities and Transport Facilities to prevent branches of such trees from contacting same. When directed by the City, Provider shall trim under the supervision and direction of the City Engineer or designee. The City shall not be liable for any damages, injuries, or claims arising from the Provider's actions under this section.

18. Signage. Provider shall post its name, location identifying information, and emergency telephone number in an area on the Wireless Facility or Ground Equipment that is visible to the public. Corporate logos are prohibited as signage. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (e.g., RF ground notification signs), or the City. Except as required by law, Provider shall not post any other signage or advertising on the Pole, the Wireless Facility, or any Ground Equipment cabinet or back-up battery. Signage must be updated by the Provider within 90 Days of a company name change of the Provider.

19. Repair. Whenever the installation, placement, attachment, repair, Modification, removal, operation, use, or relocation of the Wireless Facility or Transport Facility, or any portion

thereof is required or permitted under this ordinance, and such installation, placement, attachment, repair, Modification, removal, operation, use, or relocation causes any Service Pole, and City facility or equipment, or any portion of the Public Right-of-Way, to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Provider, at its sole cost and expense, shall promptly repair and return such Service Pole, City facility or equipment, or Public Right-of-Way to its original condition. If Provider does not perform such work as described in this paragraph, then the City shall have the option, upon 15 Days' prior written notice to Provider or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Provider and to charge Provider for the reasonable and actual costs incurred by the City. Provider shall reimburse the City for the costs in accordance with this ordinance.

20. Damage to Pole. Whenever a Service Pole, MOU Pole, or other City facility or equipment supporting a Network Node is damaged or knocked down, the City shall endeavor to provide prompt notice to Provider of the need to remove or repair Provider's Network Node. Upon receipt of notification from City of such damage, Provider shall promptly respond and shall within one hour of such notification take such measures as are necessary to make the area safe, such as disconnection of the power source to the Network Node and removing damaged equipment from the Public Right-of-Way, if applicable.

21. Access by Provider. Provider's access to Public Right-of-Way shall be coordinated with the City to schedule such access at times that are least disruptive to the traveling public. The time of day and duration of Provider's access shall be as determined by the City. For all activities that impact traffic, Provider's access shall be conditioned upon City approval of Provider's traffic control plan. Provider shall maintain written logs of each instance when Provider has accessed the Public Right-of-Way; such log shall be made available to the City upon reasonable request by the City.

22. Graffiti Abatement. As soon as practical, but not later than 14 Days from the date Provider receives notice thereof, Provider shall remove all graffiti on any of its Wireless Facilities, or Ground Equipment. The foregoing shall not relieve Provider from complying with any visual blight ordinance or regulation.

D. Private and Regulatory Compliance.

1. Necessary Approvals. Provider shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Wireless Facilities or Transport Facilities on public property before it occupies any portion of the Public Right-of-Way. The City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Provider. Provider's obligations under this Article include, but are not limited to, the obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all associated costs.

E. Permit Application Procedures.

1. Permit Required. Provider shall not install any Wireless Facility or Transport Facility in any portion of the Public Right-of-Way, or materially Modify the Wireless Facility or

Transport Facility, without first applying for and obtaining a Permit in compliance with the City's Permit application process.

2. License Agreement Required. As a precondition to receiving a Permit to Collocate a Network Node on a Service Pole, Provider shall enter into a License Agreement with the City. The City Manager or designee shall have the authority to execute said agreement.

3. Permit Not Required.

a. Notwithstanding any other provision of this ordinance, a Permit is not required for:

i. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way;

ii. Replacing or upgrading a Network Node or Pole with a Node or Pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way; or

iii. The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing Poles or Node Support Poles, in compliance with the National Electrical Safety Code.

b. For purposes of this section:

i. A Network Node or Pole is considered to be "substantially similar" if:

a) The new or upgraded Network Node, including the Antenna or other equipment element, will not be more than 10 percent larger than the original permitted Network Node, provided that the increase may not result in the Network Node exceeding the size limitations provided by Chapter 284; and

b) The new or upgraded Pole will not be more than 10 percent higher than the original permitted Pole, provided that the increase may not result in the Pole exceeding the applicable height limitations prescribed by this ordinance and Chapter 284;

ii. The replacement or upgrade does not include replacement of an existing Node Support Pole; and

iii. The replacement or upgrade does not defeat existing Concealment elements of a Node Support Pole.

c. The determination under this section of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the Network Node or Node Support Pole as approved by the City.

d. Notwithstanding the above, for activities that do not require a Permit:

i. The Provider shall give the City 30 Days advance notice of the work described above;

ii. A Network Provider may replace or upgrade a Pole only with the approval of the Pole's owner; and

iii. The size limitations may not in any event exceed the parameters prescribed by Chapter 284 without the City's approval.

4. Permit Application Requirements.

a. Provider shall complete and submit to the City an application to locate a Wireless Facility or Transport Facility, using the application form provided by the City. The following items shall accompany the completed application form:

i. A one-time, nonrefundable application fee for review of the application in the amount provided for in the City's Ch. 284 fee ordinance.

ii. Documents necessary for the review or as requested by the City that are designed and sealed by a professional engineer, including but not limited to:

a) A map or site plan drawn to scale on 14"x17" or 22"x34" paper showing:

i. The location of the proposed installation, including GIS or street address information;

ii. The proximity of the proposed installation to special districts of the City;

iii. The proximity to Schools and Municipal Parks; and

iv. The proximity to Service Poles, Utility Poles, MOU Poles, Node Support Poles, and other Network Nodes on a Service Pole or MOU Pole, if any, and depicting the sidewalks, and Tamps onto sidewalks required by Applicable Codes, TAS, or other law, including the Americans with Disabilities Act, paved street surface and all existing underground and overhead utilities in the Right-of-Way and utility easements.

b) Disclosure if the proposed installation is:

i. In a Residential Area as described in Section 13.77; and

ii. In an Underground Utility District or other area with undergrounding requirements.

c) A Pre-Permit Survey completed, signed and sealed by a qualified and experienced professional engineer in accordance with the City's requirements, certifying that Provider's Wireless Facilities or

Transport Facilities can be installed on the identified structure in compliance with the Applicable Codes. The professional engineer's qualifications must include experience performing work for similar attachments on similar facilities.

d) Detailed plans for each Wireless Facility, Transport Facility, and Ground Equipment, including representative drawings or pictures of the intended Network Node and other equipment, and proposed dimensions of same. Such plans shall show strict compliance with this ordinance, with the size limitations set forth in Chapter 284, with maximum Pole height limitations set forth herein and in Chapter 284, and with all Applicable Codes.

e) Certification that the proposed Wireless Facility complies with applicable regulations of the Federal Communications Commission and that the proposed Wireless Facility shall not cause any interference with the City's public safety radio system, traffic light system, or other City safety communications components.

f) Certification that the proposed Network Node will be placed into active commercial service by or for a Provider not later than the 60th day after the date the construction and final testing of the Network Node is completed.

g) If the proposed location is on a Service Pole, Provider shall have in place an executed License Agreement with the City for the use of the Service Pole.

i. The Permit application will be denied if this license agreement is not in place at the time the application is submitted.

ii. Representative drawings or pictures of the intended Network Node as intended to be Collocated on the Service Pole shall be provided.

iii. Engineering and construction plans and drawings related to the Collocation of the Network Node on the Service Pole, including where the proposed Transport Facilities will be connected to the Network Node as electrical power connections, shall also be provided.

iv. If the applicant is not the same as the licensee identified in the license agreement, the licensee shall sign the Permit application or provide a letter of agency satisfactory to the City. The licensee in such license agreement shall be presumed to be the owner of the Network Node and Ground Equipment, and shall be fully responsible for them and the Rental Fees payable to the City thereunder.

- v. If the requested Location has already been approved for Collocation by other entities the application for the Service Pole shall be denied.
- h) If the proposed location is on a MOU Pole, Provider shall have in place an executed License Agreement with the City for the use of the MOU Pole.
 - i. The Permit application will be denied if this license agreement is not in place at the time the application is submitted.
 - ii. Representative drawings or pictures of the intended Network Node as intended to be Collocated on the Service Pole shall be provided.
 - iii. Engineering and construction plans and drawings related to the Collocation of the Network Node on the Service Pole, including where the proposed Transport Facilities will be connected to the Network Node as electrical power connections, shall also be provided.
 - iv. If the applicant is not the same as the licensee identified in the license agreement, the licensee shall sign the Permit application or provide a letter of agency satisfactory to the City. The licensee in such license agreement shall be presumed to be the owner of the Network Node and Ground Equipment, and shall be fully responsible for them and the Rental Fees payable to the City thereunder.
 - v. If the requested Location has already been approved for Collocation by other entities the application for the Service Pole shall be denied.
- i) If the proposed location lies within a Highway Right-of-Way, the Provider must provide evidence of a permit from the state or federal government.
- iii. The City's acceptance of the submitted design documents does not relieve Provider and its engineer of full responsibility and liability for any errors and/or omissions in the engineering analysis.
- b. The City shall review the Permit application for completeness and notify the Provider in writing if Provider needs to submit additional or missing information. Such written notice will be provided within 30 Days after receipt of a Permit application for a Network Node or Node Support Pole, or within 10 Days for a Permit for a Transport Facility. The notice shall specifically identify the missing information. If Provider does not submit the missing or additional information within 180 Days of the notice, the Provider's Permit application for the requested location shall be deemed withdrawn.

c. The City shall review the Permit application to determine if the requested location and proposed installation complies with all Applicable Codes.

i. If the City denies the Permit application, it will notify Provider by electronic mail on the date the City denies the application, stating the basis for the denial.

ii. Provider may cure the deficiencies identified by the City within thirty (30) Days by resubmitting the application, along with payment to the City for the City's actual costs incurred in reviewing the resubmitted application.

5. Pre-Construction Meeting. Provider or Provider's contractor shall notify the City at least seven (7) business days before the commencement of work, as the City may require a pre-construction conference. No work shall commence until the date provided to the City or as specifically authorized at the pre-construction meeting, if any.

6. Record Drawings. Upon passing final City inspection, Provider shall furnish to the City the original drawings, revised to depict as-built conditions. The plans shall be marked "Record Drawings" on each sheet and shall be signed and dated by the Provider's design engineer. The Provider's design engineer shall certify that the plans accurately show the work as actually constructed.

7. Termination of Permits.

a. Unless the City grants an extension of time upon Provider's request, a Permit shall expire six months after approval by the City if installation pursuant to the Permit has not begun by that date.

b. Any Permit shall automatically terminate when Provider ceases to have authority to construct and operate its Wireless Facilities or Transport Facilities on Public Right-of-Way at the location covered by the Permit. Provider shall, at its sole expense, remove the Wireless Facility or Transport Facility from the Public Right-of-Way within thirty (30) Days. If Provider fails to remove the Wireless Facility or Transport Facility within thirty (30) Days, the City shall have the right to remove the facilities at Provider's expense.

c. Any Permit shall automatically terminate for a Wireless Facility or Transport Facility that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment"). Provider shall, at its sole expense, remove any Nonfunctional Attachment, or part of a Nonfunctional Attachment, within thirty (30) Days of the Wireless Facility or Transport Facility becoming nonfunctional. If Provider fails to remove a Nonfunctional Attachment within thirty (30) Days, the City shall have the right to remove the Nonfunctional Attachment at Provider's expense.

d. Provider may at any time surrender any Permit. Provider shall, at its sole expense, remove the Wireless Facility, Transport Facility, and related Ground Equipment from the Public Right-of-Way within thirty (30) Days of Provider's notice of surrender of a Permit. If Provider fails to remove the Wireless Facility, Transport Facility, or related Ground Equipment, or any part thereof from the Public Right-of-Way within thirty (30) days, the City shall have the right to remove same at Provider's expense.

E. Additional Procedures and Requirements for Providers Collocating Micro Network Nodes or Network Nodes to Municipally Owned Utility Poles and Streetlight Poles [Note: To the extent Section E conflicts with any other provision of the Design Manual then Section E will prevail.]

1. Provider Initial Registration.

a. Providers Collocating must be registered with the City (See Registration Form; Attachment A). The registration must indicate: (i) corporate name of the Provider; (ii) corporate contact information; and, (iii) contact information for primary liaison and an escalation list of company personnel (to the Senior Executive level including contact phone numbers and email addresses) responsible to respond to any operational requests from the City or DME.

b. Providers must submit a Request for Wireless Installation Permit (Attachment B).

c. The Provider shall provide copies of the PUCT certificate and any franchise or license agreement, permits, or ordinances with the Registration Form authorizing access to the Public Rights-of-Way within DME's service territory.

d. DME has no obligation to approve a Permit within any part of its service area to any Provider that has not been granted the right to use Public Right-of-Way for the installation of Wireless Facilities.

2. Updates to Registration Information. The Registration Form must be updated and submitted to DME by October 31 annually or as changes to the Provider's information warrant. Provider has an obligation and duty to maintain the accuracy of the information in the Registration Form at all times.

3. Wireless Facility Removal Notification and Abandoned Wireless Facilities.

a. Wireless Facility Removal.

i. Provider must provide DME written notice of each licensed Wireless Facility removed from an MOU Pole or Streetlight Pole. Absent such notice, each Wireless Facility will remain subject to the terms and conditions of the License Agreement.

ii. Upon receiving written notice of the Provider's Wireless Facilities have been removed, DME reserves the right to inspect the designated Wireless Facilities to verify removal. Upon verification of removal, DME shall issue the applicable Site License for the remaining authorized Wireless Facilities.

iii. In the event the inspection finds that Wireless Facilities have not been removed from MOU Poles or Streetlight Poles, each Wireless Facility shall

remain subject to the terms and conditions of License Agreement and the Provider will be assessed the fees associated with the inspection.

iii. Wireless Facility Removal Notification Process

a) Upon completion of removal of the licensed Wireless Facilities, submit confirmation of the removal to NJUNS@cityofdenton.com.

b) Include in the confirmation notice a copy of the Site License designating the licensed Wireless Facilities that have been removed.

b. Abandoned Wireless Facilities. The Provider shall bear all costs of removal of any Wireless Facilities incurred by DME as a result of such removal, and shall continue to pay all Wireless Facility fees due the City under the applicable section of the License Agreement up to and until the date on which such Wireless Facilities that have been removed.

4. Municipally Owned Utility Poles.

a. Providers will have access to Streetlight Poles, but only limited access to MOU Poles. The limitations are:

i. Wireless Facilities shall be installed only on MOU Poles and Streetlight Poles which do not have supply equipment installed. Supply equipment includes, but is not limited to: (i) transformers; (ii) capacitors; (iii) primary risers; (iv) secondary risers; (v) downguys; (vi) and switches. MOU Poles with junctions, laterals or dead-ends cannot have Antennas installed on them.

ii. Wireless Facilities cannot be installed on Poles with existing or planned vertical, armless, or ridge-pin construction.

iii. Wireless Facilities cannot be installed on MOU transmission poles or MOU transmission poles with distribution underbuild.

iv. Only one (1) Antenna is allowed on each eligible MOU Pole and must be installed such that it meets safety concerns and climbing requirements.

v. No other Wireless Facilities, except the Antenna, conduit and coax shall be installed on an MOU Pole. Only designs with wireless cabinets and meters on a separate pedestal off of the MOU Pole, or on a different pole installed by Provider, will be considered. The Provider must install all cabinets or other required appurtenances a minimum of five feet (5') radius from the MOU pole the Antenna is installed on.

vi. The use of pole top extensions is prohibited to accommodate wireless Antennas to obtain vertical clearance.

vii. Wireless Facilities shall only be installed on MOU Poles located in the Public Right-of-Way which are bucket truck accessible.

viii. Any exceptions to this limitations must be evaluated on a case-by-case basis. Final and ultimate determination of MOU Pole availability is at the sole discretion of the City.

ix. No mid-span taps will be allowed.

x. If DME transfers it facilities to another MOU Pole, the Provider must permit and transfer their facilities within 45 days to allow DME to remove the idle MOU Pole. Failure to complete pole transfer will result in DME relocating and/or removing the Provider's facilities at the Provider's sole cost and expense.

xi. Installations on stub-poles or topped-off poles shall not be allowed.

xii. Antenna grounding shall be in compliance with the current National Electrical Safety Code (NESC).

xiii. It is the responsibility of any persons having valid reason to climb MOU Poles in performance of their job to first satisfy themselves as to the structural integrity of Poles prior to climbing.

xiv. DME does not own every pole in its service territory. It is the sole responsibility of the Provider to properly identify pole ownership. Failure to properly identify pole ownership can cause a delay in the Providers permit approval. DME cannot grant permission to install Wireless Facilities on poles not owned by them. If the Provider continually fails to identify pole ownership causing the loss of DME Engineering productivity, the Provider shall be assessed a fee for this service.

xv. The Provider has the option to install a four foot (4') bracket arm, to be installed in the Communication Zone only, on which the Provider's Antenna can be mounted. All materials necessary for this installation must be provided by the Provider, and must be submitted to DME prior to approval and installation, and after approval, installed by a Qualified Electrical Worker.

a) Installation of the bracket arm can only be done by a Qualified Electrical Worker.

b) Clearances shall be per the National Electrical Safety Code and shall not interfere with the mounting bracket.

c) Supply cable must be jacketed multiple conductor. Jacket must enclose entire cable assembly.

d) Supply cable must be trained to be inside of the bracket arm.

e) Only one piece of Wireless Facilities shall be mounted on the bracket arm.

f) Maximum weight of the communication Wireless Facilities shall not exceed 15 lbs. when installed on the bracket arm.

g) Communication Wireless Facilities to be installed a minimum of twelve-inches (12") and maximum of three-feet (3') from pole on bracket arm.

h) No bracket arms shall be installed in the supply space.

i) The Provider must provide a minimum of a #6 S.D. bare copper pole ground to which the bracket arm is to be bonded. The pole ground is to be attached to a ground rod supplied, and installed, by the Provider.

j) Wireless attachment line clearances shall be as per the NESC and shall not interfere with the mounting bracket.

k) To install and maintain Wireless Facilities, Qualified Electrical Workers must be qualified to work in supply space and use supply space work rules and methods.

l) Rules for the Historic Areas and non-standard Streetlights:

i. Decorative Poles in Historic Areas will not be allowed to have Wireless Facilities.

ii. In Historic Areas, the Provider must meet all of the aesthetic requirements of the Historic Area as well as the Historic Area's homeowner's association.

iii. The Provider(s) who chooses to have Wireless Facilities in areas legally designated as a Historic Area, will pay for all costs associated with installation of approved structures to support their Wireless Facilities and any other appurtenances.

5. Execution of Providers Requests

a. The application review process for Wireless Facilities installed on MOU Poles or Streetlight Poles is illustrated in below.



b. Wireless Antenna Site License Application Process

i. The Provider must apply for an individual Site License for each Wireless Telecommunications Wireless Facility.

ii. The Provider must submit the following information for each Wireless Facility request:

a) Specifications for all Wireless Facilities proposed for installation on MOU Poles or Streetlight Poles for DME's review.

b) Electric service requirements including operating voltage and kW demand of the Wireless Facility Wireless Facilities.

c) A map showing the location of the MOU Pole or Streetlight Pole proposed for the Wireless Facility.

d) Contact information of the person or entity responsible for the installation.

e) The Provider must follow all requirements and standards set forth by DME through the NESC, Applicable Codes, Design Manual, and the Electric Service Standards.

iii. Within 45 days from receipt, DME will either:

a) Inspect and either approve or deny the proposed MOU Pole or Streetlight Pole location(s) and provide a cost estimate to replace the approved MOU Pole(s) with a taller MOU Pole suitable for the purpose Antenna, or

b) Provide a written denial of the use of the specific MOU Pole if DME deems the MOU Pole and requested Wireless Facility Request to be: (1) non-compliant with NESC, Applicable Codes, Design Manual, and the Electric Service Standards; (2) in conflict with DME's core business, including but not limited to maintenance, renovation, or relocation of DME's facilities; or (3) otherwise would compromise the

safety, reliability, capacity, and/or generally accepted engineering practices of DME's facilities.

iv. Upon approval and payment of make-ready fees or costs by Provider, DME will release the MOU Pole replacement work-order with timing being contingent on DME's current work schedule.

a) Simultaneously, Provider will contract with the DME-approved electrical contractor to install the approved Wireless Facility on the MOU Pole.

b) The electric contractor shall install Provider's Wireless Facility at the same time the contractor or DME performs MOU Pole replacement work

v. Upon final Post-Installation Inspection of the Wireless Facility, as installed, DME shall provide the Provider with a Site License. Payment of rental fees will continue until Wireless Facilities is removed.

vi. DME shall perform a Post-Installation Inspection to verify compliance with the NESC and these Guidelines. Any installation causing a violation of the NESC, Applicable Codes, Design Manual, and the Electric Service Standards will be rejected. If rejected, the Provider has one (1) week to correct any issue. Failure to address the issue(s) in this time frame shall result in stoppage of all requests and/or fiscal penalties which must be paid prior to DME continuing review of requests.

c. Any make ready required to provide the necessary clearances and pole heights for a Pole-Top Wireless Facility will be determined by DME or its contractors. All MOU Pole replacement work will be performed by DME or DME's authorized electrical contractors. All costs for the make-ready will be at the sole expense of the Provider and paid in full prior to DME beginning make ready work.

i. Antenna installation at the top of DME poles and above the supply space conductors require the installation of up to a ten foot (10') taller pole.

ii. The increased pole height, coupled with the height of any foreign Wireless Facilities or Antenna, shall not cause the structure to exceed a maximum of sixty feet (60').

iii. Acceptable Pole classes will be determined by DME.

iv. Tree trimming, where required for MOU Pole replacement or installation, or to provide clearance for the Wireless Facility(s) will be performed by DME's contractors during the MOU Pole installation, at the Provider's sole cost and expense. This does not apply to on-going maintenance needed by the Provider.

The Provider is responsible for obtaining the services of a certified tree trimmer who can do the work.

1. DME may deny any proposed Wireless Facilities that DME deems:

i. Non-compliant with the NESC, Applicable Codes, Design Manual, and the Electric Service Standards;

ii. Requires use of any MOU Pole or Streetlight Pole with insufficient capacity; or

iii. Otherwise would compromise safety, reliability, or sound engineering of DME's facilities.

6. Installation Requirements

a. Design must be sealed by a Texas Professional Engineer.

b. Providers shall supply a disconnect which has been installed on a DME approved structure which is accessible by DME employees or its contractors and has the capability to be locked by DME with a DME owned lock.

c. The Provider shall provide identification hardware (tags) that clearly identifies ownership of a Wireless Facility. All Wireless Facilities shall be identified with tags showing the following, minimal, identifiers:

- i. The Provider's generally recognized business name
- ii. An identifying company logo
- iii. An emergency telephone number
- iv. Any other mutually agreed upon identifying symbol

d. All Wireless Facilities shall be tagged at the time of installation.

i. Identification tags should be secured to remain permanently affixed to the Provider's Wireless Facilities.

ii. Specifications for the tags include:

a) Be resistant to fading from the effects of weather, chemicals, etc.;

b) Be generally consistent in appearance for a given Provider throughout DME's service territory;

c) Utilize a typeface that is legible to an observer from ground level; and

d) Avoid the use of sharp edges and corners (if constructed of metal) to prevent injury to personnel or damage to cables.

e) All Antenna and cable installations must be tagged at every Pole to ensure adequate identification.

e. The Provider shall provide RF Warning Signs on all Streetlight Poles and MOU Poles with an Antenna stating the potential hazard associated with RF at that location. The RF Warning Signs shall be submitted to DME for approval prior to installation.

f. Providers are responsible for obtaining Private Easement off of Public Right-of-Way for the installation of Wireless Facilities pedestals when necessary. The City will not negotiate Private Easements for the benefit of the Provider. The City does not guarantee the Provider will be granted property rights from property owners, municipalities, or other rights-of-way owners for the use of Public Right-of-Way.

g. Providers are solely responsible for obtaining consent, where necessary, from property owners.

7. Qualifications of Workers. All work performed within or above the Electrical Supply Zone (including the Pole-Top Zone), including work related to construction, installation, maintenance, or repair of Wireless Pole-Top Wireless Facilities must be performed by Qualified Electrical Workers.

8. Worker Safety.

a. With a Permit request, Providers shall provide an evaluation of proposed wireless units to determine compliance with FCC guidelines for human exposure to radiofrequency fields. Evaluation shall be performed with regards to uncontrolled exposure in the near field and far field regions. Evaluations shall be provided for new installations and whenever the transmitting power of existing Wireless Facilities is increased.

b. If wireless interference is suspected, the Antenna will be disconnected until the Provider provides sufficient data to show the interference has been eliminated. DME has the right to require a more in-depth study when it deems necessary.

c. Means shall be provided to safely disconnect Wireless Facilities to limit work exposure to radiation per RFCC OET Bulletin 65 when evaluation of emitted radiation exceed the limits for uncontrolled exposure. The Antenna power source shall have a lockable disconnect installed to allow the Antenna to be de-energized before work can be performed within the area designated by the RF Warning Signs.

d. DME maintains the right to disconnect a Wireless Facility without prior notice to the Provider.

e. A Provider who desires to install a Wireless Installation on DME's system is required to provide a Safety Briefing related to RF suitable for DME employees and contractors who may be required to work near and/or around such Wireless Facilities locations. The content of the Safety Briefing is to be pre-approved by DME and distribution of the Briefing shall be given at DME's discretion.

E. Removal of Wireless Facilities and Ground Equipment.

1. Removal Upon Notice from the City for City Project.

a. The City may determine that it is necessary for Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole, Transport Facilities, and related Ground Equipment, or any portion thereof, from the Public Right-of-Way or a Service Pole for City projects. Whenever the City reasonably determines that relocation or removal is needed for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a Street or Public Right-of-Way, or Service Pole, Provider shall remove or relocate its Wireless Facilities at its sole cost and expense, except as otherwise provided in existing state or federal law. Any removal or relocation of Wireless Facilities from an MOU Pole or Streetlight Pole for City projects shall be completed by Qualified Electrical Workers an electrical contractor employing approved by DME.

b. Provider shall complete the removal or relocation within thirty (30) Days after receiving written notice from the City, provided the City or a third party has not prevented Provider from completing such work. Provider shall notify the City in writing within ten (10) Days after the removal or relocation has been completed.

c. If 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 within thirty (30) Days after receiving written notice from the City, the City shall have the right to remove, or to have removed, the Micro Network Node, Network Node, Node Support Pole or related Ground Equipment, or portion thereof, at Provider's expense.

d. The City shall not be responsible or liable for damage to Provider's Wireless Facilities, Transport Facilities, or related Ground Equipment except to the extent provided in this ordinance.

e. Network Provider shall reimburse the City for the City's actual cost of removal of Wireless Facilities, Transport Facilities, and related Ground Equipment within 30 Days of receiving the invoice from the City.

2. Removal Required by the City for Safety and Imminent Danger Reasons.

a. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Wireless Facility, Transport Facility, and related Ground Equipment within the time frame and in the manner required by the City if the City

reasonably determines that the disconnection, removal, or relocation of any part of a Wireless Facility, Transport Facility, or related Ground Equipment:

- i. is necessary to protect the public health, safety, welfare, or public property;
- ii. if such Wireless Facility, Transport Facility, or related Ground Equipment, or portion thereof, is adversely affecting proper operation of Service Poles or other City facilities or equipment; or
- iii. if Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Wireless Facilities, Transport Facilities, and related Ground Equipment, or for the use of any Location under Applicable Codes, except to the extent not consistent with Chapter 284.

b. If the City reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Wireless Facilities, Transport Facilities, or related Ground Equipment at the Provider's sole cost and expense in strict accordance with the City's ordinances, except to the extent not consistent with Chapter 284.

3. Repair by Provider. Provider shall repair any damage to any Service Pole, Public Right-of-Way, City facility or equipment, and the property of any third party resulting from Provider's removal or relocation activities (or any other of Provider's activities hereunder) within 10 Days following the date of such removal or relocation, at Provider's sole cost and expense, including restoration of the Service Pole or other City facility or equipment and any portion of the Public Right-of-Way to substantially the same condition as it was immediately before the date Provider was granted 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.

G. Abandonment or Removal.

1. Abandonment by the City.

a. If the City desires at any time to abandon or remove any Service Pole or other City facility or equipment to which Provider's Wireless Facilities or Transport Facilities are attached, the City shall give Provider notice in writing at least sixty (60) Days prior to the date on which the City intends to abandon or remove such Service Pole or other City facility or equipment. If, following the expiration of the sixty (60) Day period, Provider has not removed all of Provider's Wireless Facilities or Transport Facilities, shall have the right to remove same at Provider's expense.

b. If any Service Pole or other City facility or equipment must be removed by reason of any federal, state, county, municipal or other governmental requirement, including, but not limited, to underground conversion, or the requirement of a property owner, Provider shall remove its Wireless Facilities or Transport Facilities from the affected Location, at Provider's expense, within sixty (60) Days of receipt of written notice from the City. If Provider does not remove its Wireless Facilities or Transport Facilities

within the sixty (60) Day period, the City shall have the right to remove same at Provider's expense.

c. Provider shall not abandon in place any Wireless Facilities, Transport Facilities, or related Ground Equipment, underground conduit, or any portion thereof.

2. Removal by Provider. If Provider removes or relocates a Wireless Facility, Transport Facility, or Ground Equipment at its own discretion, it shall notify the City Engineer in writing not less than 10 business days prior to removal or relocation. Provider shall obtain all Permits required for relocation or removal of its Wireless Facilities, Transport Facilities, or Ground Equipment prior to relocation or removal.

G. Inspection of Facilities.

1. Provider must give seven (7) business days' notice to the City prior to the start of work. The City reserves the right to inspect new and existing Wireless Facilities, Transport Facilities, and related Ground Equipment at any time.

2. The City's inspections, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Provider of any responsibility, obligations or liability for Provider's Wireless Facilities, Transport Facilities, or related Ground Equipment, whether assumed under Provider's Permit or otherwise existing.

3. The City shall provide written notice to Provider if an inspection reveals that all, or any part, of Provider's Wireless Facilities, Transport Facilities, or related Ground Equipment are installed, used, or maintained in violation of this ordinance or Provider's Permit. Provider agrees to bring its Wireless Facilities, Transport Facilities, and related Ground Equipment into full compliance with this ordinance and its Permit within thirty (30) Days of receipt of notice from the City. If Provider does not correct the violation(s) within thirty (30) Days as required, the City may correct the conditions at Provider's expense. When the City reasonably believes that the violation(s) poses an immediate threat to the safety of any person, interferes with the performance of the City's obligations, or poses an immediate threat to the physical integrity of Service Poles or other City facilities or the Public Right-of-Way, the City may perform work and/or take action as reasonably necessary to eliminate such immediate threat without first giving written notice to Provider. The City will advise Provider in writing of the work performed or the action taken, including photographic evidence substantiating the violation and its cause. Provider shall pay the City for all costs the City incurs in performing the work or taking the action.

H. Liability and Indemnification.

1. The City reserves the right to maintain and operate Public Rights-of-Way in the manner it deems best. Provider agrees to use Public Rights-of-Way at Provider's sole risk. The City shall exercise reasonable care to avoid damaging Provider's Wireless Facilities and the City shall report to Provider the occurrence of any such damage caused by the City's employees, agents or contractors.

2. INDEMNIFICATION. PROVIDER SHALL INDEMNIFY THE CITY AS PROVIDED IN CHAPTER 283, SECTION 283.057(a) AND (b), TEXAS LOCAL GOVERNMENT CODE.

3. Sec. 13.109. No provision of this ordinance is intended, or shall be construed, to be a waiver for any purpose by the City of governmental immunity or other provisions of Texas law limiting municipal liability. No indemnification provision contained in this ordinance under which Provider indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this ordinance or Texas law.

I. Duties and Responsibilities.

1. The City does not warrant the condition or safety of Public Rights-of-Way or Service Poles. Any Provider issued a Permit to occupy Public Rights-of-Way or Service Poles has an obligation to inspect Public Rights-of-Way or Service Poles, prior to commencing any work. By accepting a Permit from the City for occupancy of Public Right-of-Way, PROVIDER ASSUMES ALL RISKS OF ANY DAMAGE, INJURY, OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF PUBLIC RIGHTS-OF-WAY.

2. By accepting a Permit, Provider warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Provider will undertake under the Permit and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

3. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO PUBLIC RIGHTS-OF-WAY, SERVICE POLES, OR OTHER CITY FACILITIES OR EQUIPMENT, ALL OF WHICH WARRANTIES ARE HEREBY DISCLAIMED. THE CITY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. In the event that Provider shall cause an interruption of service by damaging or interfering with any equipment of the City, Provider at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting from the interruption and shall notify the City immediately. To the extent permitted by Texas law, Provider shall be liable for all direct costs resulting from such damage and any necessary repairs.

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

J. Emergency Contact. Provider shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Provider to report damage to Provider's Wireless Facilities, Transport Facilities, or Ground Equipment or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City's concerns and requests.

K. Revisions to Design Manual. The City Engineer may from time-to-time add to, delete from, or revise the Design Manual without action by City Council if the revision:

1. Does not conflict with a provision of Applicable Code, state or federal law;
2. Is for the purpose of providing detailed or technical specifications, requirements, or procedures applicable to the matters regulated by this Design Manual but does not implement new substantive regulations or requirements not addressed in this Design Manual as original approved by is article;
3. Is adopted in compliance with written procedures, as approved by the City Manager, that provide for public notice, an opportunity for public comment, and consideration of any public comments prior to adoption; and
4. Is approved by the City Manager.



Appendix A
DME Wireless Pole Attachment Annual Registration

| |
|---------------------------------|
| Name: |
| Franchise License Agreement No: |

Licensee Contact Information

| | |
|----------------|---------------|
| Billing | |
| Name: | Title: |
| Email: | Phone Number: |

| | |
|--------------------|---------------|
| Application | |
| Name: | Title: |
| Email: | Phone Number: |

| | |
|------------------|---------------|
| Transfers | |
| Name: | Title: |
| Email: | Phone Number: |

Escalation List

| | |
|-------------------------------------|---------------|
| First Level (5 day response) | |
| Name: | Title: |
| Email: | Phone Number: |

| | |
|--------------------------------------|---------------|
| Second Level (5 day response) | |
| Name: | Title: |
| Email: | Phone Number: |

| | |
|--------------------------------------|---------------|
| Third Level (10 day response) | |
| Name: | Title: |
| Email: | Phone Number: |



Appendix B
Request for Wireless Installation Permit

_____ (Licensee), hereby requests permission to add or gives notice of removal of Wireless Contacts on the DME Pole(s) shown below and on the attached drawing. These contacts will be installed in accordance to the Wireless Pole Attachment Agreement of _____ between these two organizations.

Wireless Service Provider

Date: _____

Application No.: _____

Wireless Installation Comp: _____

Nearest Street Address: _____

X Coordinates: _____

Y Coordinates: _____

Wireless Installation Information

Site Name: _____

FCC License No: _____

FCC Permit No: _____

DME Electric Account No: _____

I certify, that by signing this statement, the application attached hereto complies with the requirements of the Texas Engineering Act, the National Electrical Safety Code, and all other Applicable Standards.

Authorized Signature

Printed Name

Title

Approval

Wireless Installation permission is hereby granted to attach the Wireless Telecommunication facilities described in the application to the Pole(s) indicated below and as indicated in the attached sketches or maps provided. However, if such attachment or removals are not completed within sixty (60) days of the authorization date, billing for said attachments will continue until the date of actual removal.

Authorized Signature

Printed Name

Title

Date



Appendix C

Application No: _____

| Action (I)nstall (R)emove (E)xisting | Type | Manufacturer | Model | Diameter (Inches) Height/ Width/ Depth | Weight (lbs) | Highest Installation Point on Pole (feet/inches) | Lowest Installation Point on Pole (feet/inches) | QTY | Transmit Frequencies (MHz) | Receive Frequencies (MHz) | Active or Passive | Power (AC or DC) | Operating Voltage | Amperage (Max) | Conduit (size & Quantity) |
|---|------|--------------|-------|--|-----------------|---|--|-----|----------------------------------|---------------------------------|-------------------------|---------------------|----------------------|-------------------|---------------------------------|
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Electric Service Requirements: _____