

RESOLUTION NO. 17-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS APPROVING THE FORM SERVICE POLE COLLOCATION ATTACHMENT LICENSE AGREEMENT ATTACHED AS EXHIBIT "A" IN CONNECTION WITH COLLOCATION OF NETWORK NODES ON CITY SERVICE POLES CONSISTING OF TRAFFIC SIGNAL, SIGNAGE AND NON-DECORATIVE STREET LIGHT POLES; AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT WITH EACH NETWORK PROVIDER APPROVED TO ATTACH ITS NETWORK NODES ON THE CITY'S SERVICE POLES.

WHEREAS, SB1004, effective September 1, 2017, establishes requirements for collocation of network nodes on the City's service poles, consisting of traffic signal, signage and non-decorative street light poles, subject to an agreement with the network provider; and

WHEREAS, by Ordinance No. 2106 pursuant to SB1004 the City Council amended Chapter 5 of the Code of Ordinances in response to SB1004 and adopted a Design Manual for Installation of Network Nodes and Node Support Poles to be effective September 1, 2017; and

WHEREAS, the City Council desires to approve a form Service Pole Collocation Attachment License Agreement (Agreement) to be used in connection with attachments of network nodes on the City's service poles; and

WHEREAS, the City Council desires to authorize the City Manager to sign the Agreement on the City's behalf with each network provider approved to attach its network nodes on the City's service poles; NOW, THEREFORE,

**BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF SUGAR LAND, TEXAS:**

Section 1. That the City Council adopts the recitals and findings set forth in the preamble to this Resolution, which are found to be true and correct.

Section 2. That the City Council approves the form Service Pole Collocation Attachment License Agreement attached as Exhibit "A" (Agreement) for use in connection with collocation of network nodes (as defined in Chapter 284, Tex. Loc. Gov't Code) on the City's service poles consisting of traffic signal, signage and non-decorative street light poles (Service Poles).

Section 3. That the City Council authorizes the City Manager to sign the Agreement on the City's behalf with each network provider approved to attach its network nodes on the City's Service Poles.

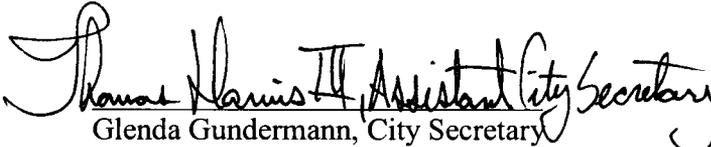
Section 4. That this Resolution is effective September 1, 2017.

APPROVED on August 24, 2017.



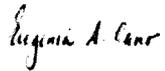
Joe R. Zimmerman, Mayor

ATTEST:



Thomas Harris III, Assistant City Secretary
Glenda Gundermann, City Secretary

APPROVED AS TO FORM:



Eugenia A. Carr

EXHIBIT A

CITY OF SUGAR LAND, TEXAS

**SERVICE POLE COLLOCATION ATTACHMENT LICENSE AGREEMENT
(CHAPTER 284, TEX. LOC. GOV'T CODE)**

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**CITY OF SUGAR LAND
SERVICE POLE COLLOCATION ATTACHMENT
LICENSE AGREEMENT**

This **Service Pole Collocation Attachment License Agreement** (“Agreement”) is made by and between the City of Sugar Land, Texas, (City), a home-rule municipal corporation of the State of Texas, and _____, (Network Provider or Licensee), a _____ with its principal offices at _____. Pursuant to Chapter 284, Tex. Loc. Gov’t Code (Chapter 284), Sections 284.056 and 284.101 (a) (3), the City enters into this Agreement to further detail the terms and conditions of the Collocation of attachments of wireless Network Nodes to and on City Service Poles.

RECITALS

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

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

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

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

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

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

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

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

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

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

ARTICLE 1. PARTIES

1.1. ADDRESSES

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

City of Sugar Land

Attn: City Manager
2700 Town Center Blvd. North
Sugar Land, Texas 77479
Email: abogard@sugarlandtx.gov

Attn: Director of Public Works
111 Gillingham Lane
Sugar Land, Texas 77478
Email: rvalenzuela@sugarlandtx.gov

Attn: City Attorney
2700 Town Center Blvd. North
Sugar Land, Texas 77479
Email: mriede@sugarlandtx.gov

Network Provider/Licensee

Attn: _____
Street _____
City _____ State _____ Zip _____
Email: _____

ARTICLE 2. DEFINITIONS

- 2.1. As used in this Agreement, the definitions in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 apply in addition to the definitions in Section 2.1, below:¹
- 2.1.1. *Abandon* and its derivatives means the facilities installed in the public right-of-way (including, by way of example, but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, are still in active use.
 - 2.1.2. *Affiliate* means (a) any entity who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with the Licensee; (b) any entity acquiring substantially all of the assets of Licensee in the market defined by the Federal Communications Commission in which the Locations are located; or (c) any successor entity in a merger, acquisition, or other business reorganization involving Licensee. For purposes of this definition, “own” means to own an equity or other financial interest (or the equivalent thereof) of more than 10 percent or any management interest.
 - 2.1.3. *Agreement* means this Service Pole Collocation Attachment License Agreement between the Parties, including any exhibits and any written amendments as authorized by this Agreement.
 - 2.1.4. *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
 - 2.1.5. *Applicable code or codes* mean the building, electrical, mechanical, plumbing and fire codes adopted in Chapter 7 of the City’s Development Code, as amended not inconsistent with state law.
 - 2.1.6. *Building Official* means the City of Sugar Land Building Official.
 - 2.1.7. *Chapter 284* means Chapter 284, Tex. Local Gov’t Code.
 - 2.1.8. *City* means the City of Sugar Land, Texas.
 - 2.1.9. *City Manager* means the city manager of the City or his designee.
 - 2.1.10. *Collocate and collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole. *Chapter 284, §284.002*

- 2.1.11 *Concealment or camouflaged* means the Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that the Wireless Facility or Pole blends into the surrounding environment and is visually unobtrusive. The concealment or camouflage measure may include, but is not limited to, being hidden beneath a façade, blended with the surrounding area design, painted to match the supporting structure or area, or disguised with artificial tree branches.
- 2.1.12 *Decorative pole* means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed, as provided by City ordinance(s). *Chapter 284, §284.002*
- 2.1.13 *Design District* has the meaning as provided in Chapter 284, which are designated as provided in Chapter 5, Article IIIB. of the Code of Ordinances. *Chapter 284, §284.002*
- 2.1.14 *Design Manual* means the City’s Design Manual for the Installation of Network Nodes and Node Support Poles adopted pursuant to Chapter 5, Article IIIA. of the Code of Ordinances, as amended. *Chapter 284, §284.108*
- 2.1.15 *Director* means the Director of Public Works or any other person the city manager designates to administer this Agreement.
- 2.1.16 *Disaster* has the meaning as assigned by Chapter 418, Tex. Gov’t Code.
- 2.1.17 *Distributed Antenna System or DAS* is included as a type of “Network Node.”
- 2.1.18 *Effective Date* means that date signed by the City Manager on the signature page of this Agreement for the Licensee.
- 2.1.19 *Emergency* means an imminent, impending or actual threatened or humanly-induced situation wherein the health, safety or welfare of the city’s residents is threatened. An emergency includes a disaster and a declaration of emergency by city, state or federal governmental authorities.
- 2.1.20 *Ground Equipment* means a Wireless Facility that is located on the surface of the Public Right-of-Way w an approved Permit that is immediately adjacent to the Pole on which the Network Node is located.
- 2.1.21 *Historic District* means an area that is zoned or otherwise designated as a historic district under City ordinance, or state or federal law, including, but not limited to, §442.001(3) of the Texas Government Code and 16 U.S.C. § 470. The City’s Historic Districts are designated in Chapter 5, Article IIIB. of the Code of Ordinances.

- 2.1.22 *Historic Landmark* recognized by the City, state or federal government under the City Code of Ordinances, State Law, including, but not limited to, Sec. 442.001(3) of the Texas Government Code, a federal law, including, but not limited to, 16 U.S.C. § 470.
- 2.1.23 *Law* means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance. *Chapter 284, §284.002*
- 2.1.24 *Licensee and Network Provider* means _____ [Name of entity] and includes its successors and assigns.
- 2.1.25 *Location* means the location of a Service Pole in the Public Right-of-Way in which Licensee is authorized to place its Network Node, provided that it has obtained all Permits.
- 2.1.26 *Macro tower* means a guyed or self-supported pole or monopole that supports or is capable of supporting antennas and exceeds the height parameters prescribed by Chapter 284. §§284.002, 284.103.
- 2.1.27 *Micro network node* means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches. *Chapter 284, §284.002*
- 2.1.28 *Modification* means any work in the Public Right-of-Way, or alteration of a Wireless Facility that is not substantially similar in size or is a change in the Wireless Facility's location in the Public Right-of-Way or its physical position on the Pole except those alterations or changes that are excepted from requiring a Permit under Chapter 284, Sec. 284.157 (a) and (b) do not constitute Modifications.
- 2.1.29 *Municipally owned utility pole* means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way. Chapter 284, §284.002
- 2.1.30 *MUTCD* means the Texas Manual of Uniform Traffic Control Devices.
- 2.1.31 *Network Node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes:
- (1) Equipment associated with wireless communications;
 - (2) A radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (3) Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation.

The term does not include an electric generator, a pole or a macro tower. *Chapter 284, §284.002*

2.1.32 *Network provider* means a :

- (1) Wireless service provider; or
- (2) Person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider (i) network nodes or (ii) node support poles or any other structure that supports or is capable of supporting a network node. Chapter 284, §284.002

Licensee is a *Network Provider*.

2.1.33 *Park* means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity. A park includes:

(1) A tier one park, governed by Chapter 5, Article I, Code of Ordinances and the rules, regulations, and parks and recreation department policies and procedures adopted thereunder; and

(2) A tier two park governed by Chapter 5, Article XV, Code of Ordinances and the rules, regulations, policies and procedures adopted pursuant thereto. The following are tier two parks:

(a) The Festival Site located on the 52-acre site, as described in Amendment Number 1 to Ground Lease Agreement among the City, the Sugar Land 4B Corporation and the University of Houston System dated November 20, 2012;

(b) The TIRZ 4 Plaza located on the 21.000-acre tract described in the instrument filed as File No 2011096436 of the Fort Bend County Official Public Records and the 17.450-acre tract described in the instrument filed as File No. 2012139990 of the Fort Bend County Official Public Records; and

(c) The Sugar Land Town Square Plaza, the boundaries of which are described in the instrument filed as File No. 2003152323 of the Fort Bend County Official Public Records.

A map showing the parks is on file in the City Secretary's Office and on-line on the City's website at www.sugarlandtx.gov

The map will be updated as parks are added to the City's parks system. Chapter 284, §284.002

2.1.34 *Party* or *Parties* mean the Licensee and City, individually or collectively as indicated in the context in which it appears.

- 2.1.35 *Other Party* or *Other Parties* means a Chapter 284 Wireless Service provider that is not a Party to this Agreement.
- 2.1.36 *Node support pole* means a pole installed by a network provider for the primary purpose of supporting a network node.
- 2.1.37 *Permit* means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the City has police power authority. A “permit” includes all permits required by Chapter 5, Article III of the Sugar Land Code of Ordinances and applicable codes and ordinances. *Chapter 284, §284.002*
- 2.1.38 *Pole* means a service pole, municipally owned utility pole, node support pole, or utility pole.
- 2.1.39 *Provider* has the same meaning as “Network Provider.”
- 2.1.40 *Public right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include: (A) a private easement; or (B) the airwaves above a public right-of-way with regard to wireless telecommunications. Chapter 284, §284.002
- 2.1.41 *Public right-of-way rate* means the annual rental charge paid by a network provider to the City related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality pursuant to Chapter 284, Sec. 284.053, which has been inserted into Section 2-136 of the Sugar Land Code of Ordinances.
- 2.1.42 *Rental Fees* means as described in Article 5 herein.
- 2.1.43 *ROW Management Ordinance* means Chapter 5, Article III of the Sugar Land Code of Ordinances.
- 2.1.44 *School* means an educational institution that offers a course of instruction for students in one or more grades from kindergarten through grade 12.
- 2.1.45 *Service pole* means a pole, other than a municipally owned utility pole, owned or operated by the City and located in a Public Right-of-Way, including: (A) a pole that supports traffic control functions; (B) a structure for signage; (C) a pole that supports lighting, other than a decorative pole; and (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes. *Chapter 284, §284.002*
- 2.1.46 *Small cell* shall be included as a type of Network Node.
- 2.1.47 *Street* means only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular

travel where there is no curb. A street is measured as the average width at the midpoint between intersections. A “street” is generally part of, but smaller in width than, the width of the entire Public Right-of-Way, while a Public Right-of-Way may include sidewalks, walkways, off street pathways for pedestrian and/or bicycle use, bicycle lanes and utility easements, but a “street” does not. A “street” does not include the curb, sidewalk, walkway, off street pathway for pedestrian and/or bicycle use, or bicycle lanes, if any present at the time of a permit application or if added later.

2.1.48 *TAS* means the Texas Accessibility Standards.

2.1.49 *Traffic Signal* means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed. *Chapter 284, §284.002*

2.1.50 *Transport facility* means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes. *Chapter 284, §284.002*

2.1.51 *Underground Requirement Area* shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way. Undergrounding Requirement Areas, include, but are not limited to, the following:

- (1) Subdivisions, as shown by plats filed in the Fort Bend County Plat Records, in which utility service lines have been required, or are required to be, underground pursuant to the city’s Development Code or Code of Ordinances;
- (2) Areas of the City designated from time to time by the city as underground requirement areas in accordance with the development code or this code, as may be allowed by law; and
- (3) Areas of the City where the utilities are converted from overhead to underground in the public right-of-way, as may be allowed by law. *Chapter 284, §284.002*

2.1.52 *Utility pole* means 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, Tex. Utilities Code. *Chapter 284, §284.002.*

2.1.52 *Wireless facilities* mean Micro Network Nodes, Network Nodes, and Node Support Poles.

2.1.53 *Wireless service* means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node. *Chapter 284, §284.002*

2.1.54 *Wireless service provider* means a person that provides wireless service to the public. *Chapter 284, §284.002*

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

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

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

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

3.1. CITY GRANT OF PERMISSION IN ACCORDANCE WITH CHAPTER 284

3.1.1. The City grants Licensee the right to enter the Public Right-of-Way and to Collocate Network Node facilities on Service Poles in the Public Right-of-Way, only to the extent required by Chapter 284, §§284.056 and 284.101 (a) (3) and subject to the terms of this Agreement and Chapter 284.

3.1.2. Except to the extent otherwise expressly allowed by law, this Agreement does not confer any other rights not described herein nor does it permit Licensee or third parties to use the Public Right-of-Way or Service Poles for purposes not specified in this Agreement,

3.1.3. This Agreement does not authorize the Licensee to install equipment and facilities associated with or for Macro Towers in the Public Right-of-Way.

3.1.4. Network Provider must have an existing Agreement with the City to apply for and be granted a Permit to use or to in any way Collocate Network Node facilities on Service Poles.

3.2. SCOPE OF AGREEMENT

3.2.1. This Agreement is not exclusive and the City reserves the right to grant permission to other eligible and qualified Other Parties to enter the Public Right-of-Way and to use Service Poles in the Public Right-of-Way to Collocate Network Node facilities under Chapter 284.

3.2.2. Except as expressly provided herein, this Agreement does not grant Licensee the authority to grant any rights under this Agreement to any Other Party without the written consent of the City in a separate agreement in accordance with Chapter 284.

3.2.3. This Agreement only authorizes Collocation of a Network Node on Service Poles in the Public Right-of-Way and does not confer any rights or permission to install or otherwise collocate a Network Node on any other Poles or to place such Network Node in the Public Right-of-Way.

3.2.4. This Agreement does not grant to the Licensee an interest in any property.

3.3. UNAUTHORIZED NETWORK NODES ON SERVICE POLES

3.3.1. The City Manager shall deem as unauthorized any type of Network Node attached or Collocated to or on a Service Pole if the Network Providers has not entered into this Agreement, even if one or more Permits was inadvertently and incorrectly issued by the City. Upon 30 days' written notice, the City Manager, at his or her sole discretion may remove or require the Licensee to remove unauthorized Network Node at Licensee's expense without any liability to the City. The City will invoice and Licensee shall reimburse the City within 30 days of receipt of the invoice for the City's cost of removal of unauthorized Network Node.

3.3.2. Any Modification to a Network Node must be approved by the Director except for those modifications, repairs, routine maintenance or related work that do not require a Permit under Chapter 284, Sec. 284.157 (a) and (b); however, even for those modifications, repairs, routine maintenance or related work that do not require a permit under Chapter 284, Sec. 284.157 (a) and (b), advance notice shall be given via written letter (which may be delivered by hand or other method) or an acknowledged email transmission by the Licensee to the City contact listed in Article I shall be provided to the City as allowed by Chapter 284, Sec. 284.157 (d) (1)- (3).

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

4.1. APPLICATION FOR A PERMIT TO COLLOCATE A NETWORK NODE ON A SERVICE POLE

4.1.1. *Permit Application for Collocation on Service Pole.* Prior to Collocation of a Network Node on a Service Pole or installation of the related ground equipment adjacent to a Service Pole, Licensee must complete and submit the Permit application(s) required by the ROW Management Ordinance, which includes applications required by Applicable Codes. A copy of the applicable Permit application(s) is available on line at the following:

<http://www.sugarlandtx.gov/DocumentCenter/View/193>

<https://www.sugarlandtx.gov/193/Forms-Applications>

4.1.1.1 *Permit and Application Fees.* The Licensee must pay to the City the application fees at the time of the submittal of the application for the permits. Permit fees must be submitted upon the City's approval of the applications for issuance of a

permit. Except as provided in this Agreement, the application and permit fees are non-refundable.

4.1.1.2 *Documents and Information.* Documents necessary for the review of the application for Collocation of a Network Node on a Service Pole Location and as reasonably requested by the Director in accordance with Chapter 284, include, but are not limited to:

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

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

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

4.1.2 *Review of Permit Application.* The Permit application(s) will be reviewed in accordance with the ROW Management Ordinance, Design Manual, Applicable Codes, and this Agreement.

4.1.3. *Applicant/Licensee.* If the applicant is not the same as the Licensee listed on the permit application, the Licensee shall sign the permit application, also, and is presumed to be the owner of the Network Node and Ground Equipment and shall be fully responsible for them and the Rental Fees as set forth as the Licensee and Network Provider in this Agreement.

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

4.2.1. The Director and Building Official (as to Applicable Codes) shall review the Permit application for completeness and act in the time allowed, with notifications to the Licensee, as prescribed in Chapter 284, Sec. 284.154.

4.2.2. The Director and Building Official will review the respective Permit applications to determine if:

4.2.2.1. All the required documentation has been provided;

4.2.2.2. The requirements of the ROW Management Ordinance, Design Manual, Applicable Codes, and this Agreement are met; and

4.2.2.3. Written permission has been obtained by applicable parties as required by this Agreement; and

- 4.2.3. A Permit application will be denied if the Licensee's application is not in compliance with the City's ROW Management Ordinance, Design Manual, Applicable Codes, and this Agreement.
- 4.2.4. Licensee shall not install a Network Node without the requisite Permit(s).
- 4.2.5. The Director will forward to the City's Director of Information Technology each approved GIS or Street Address and related information in the Permit application when a Permit is approved.

ARTICLE 5. CHAPTER 284 RENTAL FEES AND OTHER PAYMENTS

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

5.1.1 *Annual Network Node Rate.* Licensee shall pay the City annually the Public Right-of-Way Rate of \$250 per Network Node Location as provided in Section 2-136 (5)(p) of the Code of Ordinances for which Licensee has obtained Permit(s) regardless of whether or not a Licensee installs Network Nodes in the Public Right-of-Way. Except as provided for in this Agreement, the annual Network Node Public Right-of-Way Rate is non-refundable.

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

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

5.1.4 *Annual Network Node Rate Adjustment.* Pursuant to Ch. 284, Sec. 284.054 on January 1st of each year after December 31, 2018, the City intends to adjust the annual Network Node Public Right-of-Way Rate by an amount equal to one-half the annual change to the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics in February of the preceding year. The City intends to provide written notice to each Network Provider of the new rate by October 31st for the succeeding calendar year. The new rate shall apply to the first payment due to the City on the later of (i) January 1st; or (ii) after 60 days following written notice to the network provider of the increase and new annual rate. It is the City's intent that the new adjusted Network Node Public Right-of-Way Rate be effective each year after December 31, 2018, in order to apply, and begin accruing January 1st of the year following the Notice of, the adjustment in the Network Node Public Right-of-Way Rate.

5.2. SERVICE POLE COLLOCATION ATTACHMENT FEE. (CH. 284, §284.056)

5.2.1 *Annual Service Pole Collocation Attachment Fee.* Licensee shall pay the City annually an additional fee of \$20 for each Network Node Collocated on a Service Pole for each Location for which Licensee has obtained Permit(s) to collocate a Network Node on a Service Pole regardless of whether or not a Licensee collocates a Network Node on a Service Pole. Except as provided for in this Agreement, this fee is non-refundable. *Ch. 284., §284.056*

5.2.2. *Initial Annual Service Pole Collocation Attachment Fee Pro Rated.* The annual Service Pole Collocation attachment fee payment for the first year at any Location (“Initial Annual Service Pole Collocation Attachment Fee Payment”) begins accruing when the later in date permit is issued for the Service Pole and is due upon issuance of the right-of-way work permit to install or collocate a Network Node at the Location. The Initial Annual Service Pole Collocation Attachment Fee Payment shall be pro-rated for the months remaining in the calendar year after the later in date of the Permits issued for the Network Node at the Location.

5.2.3. *Subsequent Years Annual Service Pole Collocation Attachment Fee Due Date.* The annual Service Pole Collocation Attachment Fee for every year after the Initial Payment shall be paid within thirty (30) days of receipt of an invoice from the City for each calendar year for each Network Node in the Public Right-of-Way for such calendar year period.

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

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

5.3.2 Licensee may either:

(a) Install its own Transport Facilities, subject to Transport Facility fee payments as set out in Subsection 5.3.3 below (*Ch. 284, §284.055 (a) (1)*); or

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

5.3.3. *Monthly Transport Facility Fee Payment.* The Network Provider shall pay to the City an amount equal to \$28 multiplied by the number of the Network Provider's Network Nodes located in the Public Right-of-Way for which the installed Transport Facilities provide backhaul unless or until the time the Network Provider's payment of municipal rights-of-way fees for use of the Public Right-of-Ways to the City from that same and corresponding calendar quarter period exceeds its monthly aggregate per-node compensation to the City due for that calendar quarter, subject to the verification as set out in Subsection 5.3.4. below. *Ch. 284., §284.055 (b)*

5.3.3.1. *Quarterly Due Dates of Transport Facility Fee Payments.* The Monthly Transport Facility Fee begins accruing on the date the right-of-way work Permit is issued for the Transport Facilities and is on the same quarterly access line schedule for the quarterly calendar period covered and quarterly payment schedule as in Chapter 283 of the Tex. Loc. Gov't Code. On a quarterly calendar year basis for each calendar quarter, the Network Provider shall pay the City the Monthly Transport Facility Fee payment 45 days after the end of the preceding calendar quarter the monthly Public Right-of-Way rate for Transport Facilities.

5.3.4 *Alternative Quarterly True-up Verification Report.* If the Network Provider utilizes the option to obtain transport service from a person that is paying municipal fees to occupy the Public Right-of-Way per Ch. 284., §284.055 (a) (2) or utilizes the Ch. 284, Sec. 284.055 (a) (1), option and installs its own Transport Facilities and asserts that it has paid the City in an amount that is equivalent to or greater than the Transport Facility fee due for that quarterly period for the same and corresponding calendar quarter period that would have been due from the Network Provider to the City for the calendar quarter then:

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

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

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

(d) In the event the payment to the City that is asserted to be equal to or exceeding the monthly aggregate per-node Transport Facility compensation due to the City under this Agreement and Ch. 284., Sec. 284.055 was by a different named entity than the Network Provider, the Network Provider bears the burden to establish that the entity paying the City and the Network Provider is an Affiliate and that they are

one and the same for purposes of a Chapter 284 Transport Facility fee true-up credit against the Monthly Transport Facility Fee.

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

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

5.4.1 *Application and Permit Fees.* Licensee shall pay the City the Ch. 284, Sec. 284.156 application fees contemporaneously with the submittal of the application for the Permit(s). The Permit fees must be paid upon the City's approval of the respective applications for issuance of a Permit(s). Except as provided for in this Agreement, application and Permit fees are non-refundable. *Ch. 284, § 284.156*

5.5 OTHER PAYMENTS

The Network Node Public Right-of-Way Rate, the Service Pole Collocation Attachment Fee, the Transport Facility Fee (collectively sometimes referred to as "Rental Fees") payable under Ch. 284 and the application and Permit fees payable under the ROW Management Ordinance, including Permit fees required by Applicable Codes, shall be exclusive of, and in addition to all ad valorem taxes, special assessments for municipal improvements, and other lawful obligations of the Licensee to the City.

5.6 NON-FUNCTIONING NETWORK NODES

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

5.7 PAYMENT

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

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

Chief Accountant
Finance Department
City of Sugar Land
P.O. Box 110
Sugar Land, TX 77487-0110

5.8 REIMBURSEMENT

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

5.9 PAYMENT LIMITS

The Licensee will not owe any compensation to the City following Licensee's removal of any Network Nodes attached to Service Poles consistent with the terms of this Agreement, if the Licensee has paid for any damages due to the installation, maintenance or removal of the Network Node, or any other amounts due the City under this Agreement, including any Rental Fees. The City shall not issue any refunds for any amounts already paid by Licensee for Network Nodes attached to Service Poles that have been removed.

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

5.10 COMPLIANCE REVIEW

The City may, at its discretion, upon no less than 30 days' prior written notice, require that the Licensee produce its records related to this Agreement for review by the City Manager to ascertain the correctness of the information provided under Article 5 of this Agreement. If, after reviewing the information, the City Manager identifies amounts the Licensee owes the City from prior periods, the Licensee shall pay the amount identified within 30 days of the date of the invoice. If the review determines that payment of the Rental Fees was not made in accordance with the terms of this Agreement and that such payment represents an overpayment of any amount, the City will credit such overpayment against Licensee's future obligations to City under this Agreement.

5.11 PERMITS CONDITIONED ON PAYMENTS BEING CURRENT

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

ARTICLE 6. DESIGN MANUAL AND ROW MANAGEMENT ORDINANCE COMPLIANCE AND RELATED REQUIREMENTS

6.1. AESTHETIC REQUIREMENTS

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

6.1.2. To the extent not in conflict with the ROW Management Ordinance, Design Manual or Chapter 284, the Network Node on the Service Pole shall be concealed or enclosed as much as possible in an equipment box, cabinet or other unit that may include ventilation openings; external cables and wires hanging off a pole shall be sheathed or enclosed in a

conduit, so that wires are protected and not visible or are visually minimized to the extent possible.

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

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

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

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

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

6.2. INSTALLATION

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

6.3. INSPECTIONS

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

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

6.4. PLACEMENT

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

6.5. ELECTRICAL SUPPLY

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

6.6. TRANSPORT FACILITY FIBER CONNECTION

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

6.7. GENERATORS

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

6.8. EQUIPMENT DIMENSIONS

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

6.9. TREE MAINTENANCE

Network Provider shall comply with the ROW Management Ordinance and Design Manual concerning tree maintenance.

6.10. SIGNAGE

Network Provider shall comply with the ROW Management Ordinance and Design Manual concerning signage on the Network Node and any ground equipment.

6.11. REPAIR

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

6.12. GRAFFITI ABATEMENT

The Network Provider shall comply with the ROW Management Ordinance concerning graffiti on any of its Network Node or ground equipment.

ARTICLE 7. RADIO INTERFERENCE BY NETWORK NODE PROHIBITED

(Chapter 284, § 284.304)

7.1. NO LIABILITY

7.1.1. The City shall not be liable to Licensee for any damage caused by other Licensees with a Network Node in close proximity to the Service Pole.

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

7.2. NO INTERFERENCE

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

notice, the Network Provider shall take all steps reasonably necessary to remedy any harmful interference.

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

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

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

ARTICLE 8. ABANDONMENT, RELOCATION AND REMOVAL

8.1. ABANDONMENT OF OBSOLETE NETWORK NODE

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

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

8.2. REMOVAL REQUIRED BY CITY

8.2.1. To the extent not in conflict with the City's ROW Management Ordinance, Design Manual or Chapter 284, Sec. 284.303, Licensee shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Network Nodes and ground equipment within the time frame and in the manner required by the Director if the Director reasonably determines that the disconnection, removal, or relocation of any part of Network Nodes and ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) Network Nodes and ground equipment or portion thereof, is adversely affecting proper operation of streetlights, or other City property, or (c) Licensee loses or fails to obtain all applicable licenses, Permits, and certifications required by Law for its Network Nodes and ground equipment, or use of any Location under this Agreement. If the Director reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Network Nodes and ground equipment at the Licensee's sole cost and expense.

8.2.2. The City Engineer shall provide 90 days' written notice to the Licensee before removing a Network Nodes and ground equipment under this Section 8.2, unless there is imminent danger to the public health, safety, and welfare.

8.2.3. Licensee shall reimburse City for the City's actual cost of removal and any storage or associated costs of its Network Nodes and ground equipment in accordance with this Agreement within 30 days of receiving the invoice from the City.

8.3. REMOVAL OR RELOCATION BY LICENSEE

8.3.1. If the Licensee removes or relocates a Network Node and ground equipment at its own discretion, it shall notify the Director and City Manager in writing not less than 10 business days prior to removal or relocation. Licensee shall obtain all permits required for relocation or removal of its Network Nodes and ground equipment prior to relocation or removal.

8.3.2. Except as otherwise provided in this Agreement, the City shall not issue any refunds for any amounts paid by Licensee for Network Nodes and ground equipment that have been removed.

8.4. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT

8.4.1. To the extent not in conflict with the ROW Management Ordinance or Design Manual and Chapter 284, Sec. 284.303, Licensee understands and acknowledges that the City may require Licensee to remove or relocate its Network Nodes and ground equipment, or any portion thereof from the Public Right-of-Way, and Licensee, at the Director's direction, shall remove or relocate the same at Licensee's sole cost and expense, whenever the Director reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or

maintenance project that enhances the Public Right-of-Way for use of the traveling public.

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

8.5. REMOVAL REQUIRED AFTER TERMINATION OR EXPIRATION OF LICENSE

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

8.6. REMOVAL REQUIRED AFTER REVOCATION

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

8.7. OWNERSHIP

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

8.8. RESTORATION

Licensee shall repair any damage to the Public Right-of-Way, and the property of any third party resulting from Licensee's removal activities (or any other of Licensee's activities hereunder) within 10 days following the date of such removal or relocation, at Licensee's sole cost and

expense, to include restoration of the Public Right-of-Way and property to substantially the same condition as it was immediately before the Effective Date, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

8.9. LICENSEE RESPONSIBLE

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

8.10. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE

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

ARTICLE 9. ENVIRONMENTAL LAW REQUIREMENTS

The Network Provider shall comply with the ROW Management Ordinance concerning environmental law requirements on any of its Network Node or ground equipment.

ARTICLE 10. SECURITY

The Network Provider shall comply with the ROW Management Ordinance concerning security requirements on any of its Network Node or ground equipment.

ARTICLE 11. INDEMNIFICATION, INSURANCE AND LIABILITY

11.1 *Indemnity.* Network Provider shall comply with the indemnification requirements of Chapter 284, Sec. 284.302 concerning any of its Network Node or ground equipment.

11.2 *Insurance.* Network Provider shall comply with the City’s ROW Management Ordinance concerning insurance requirements on any of its Network Node or ground equipment.

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

ARTICLE 12. TERM AND TERMINATION

12.1. TERM

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

12.2. RENEWALS

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

12.3. TERMINATION FOR CAUSE BY CITY

12.3.1. If Licensee defaults under this Agreement, the City may terminate this Agreement subject to Licensee's ability to cure such defaults below. The City's right to terminate this Agreement for Licensee's default is cumulative of all its rights and remedies which exist now or in the future. Default by Licensee includes, but is not limited to:

12.3.1.1. Failure of the Licensee to comply with any material term of this Agreement;

12.3.1.2. Licensee becomes insolvent.

12.3.1.3. The Licensee's failure to obtain all licenses, permits, and certification required by the City under this Agreement and pay all fees associated therewith after the City has notified the Licensee that licenses, permits, and certifications must be obtained to work in the Public Right-of-Way;

12.3.1.4. All or a substantial part of Licensee's assets are assigned for the benefit of its creditors; or

12.3.1.5. A receiver or trustee is appointed for Licensee.

12.3.2. If a default occurs, the City Manager shall deliver a written notice to Licensee describing the default and the termination date. If the City Manager sends a default notice, the Licensee shall have 60 days from the receipt of such notice to cure the default (unless the nature of the event takes longer to cure and the Licensee commences a cure within such 60-day period and thereafter diligently pursues it but will not exceed 180 days unless agreed to by the City Manager which agreement will not be unreasonably withheld). If Licensee cures the default before the proposed termination date, the proposed termination is ineffective.

12.3.3. If the default is not cured in the time and manner set out above or by the City Manager, then the City Manager may immediately terminate this Agreement by notifying Licensee in writing of such termination. After receiving the notice, Licensee shall, immediately cease operations and remove Network Node from the Public Right-of-Way in accordance with the Sections 8.5 and 8.6 of this Agreement, and any payment due shall be remitted by Licensee within 30 days of the receipt of the notice to the address in the Section 1.1 of this Agreement.

12.4. TERMINATION BY LICENSEE

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

12.5. AUTOMATIC TERMINATION.

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

ARTICLE 13. TRANSFER OF AUTHORITY

13.1. ASSIGNMENT

13.1.1. Licensee may not assign, delegate, transfer, or sell all or any portion of its rights, privileges and obligations under this Agreement without written notice to and the prior written consent of the City Manager, which consent will not be unreasonably withheld. No assignment in law or otherwise shall be effective until the assignee has filed with the City Manager an instrument, duly executed, reciting the fact of such assignment, accepting the terms of this Agreement, and agreeing to comply with all of the provisions hereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of this Agreement for the purposes of this Article.

13.1.2. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in this Article. This Agreement does not create any personal liability on the part of any officer or agent of the City.

13.1.3. Notwithstanding anything to the contrary contained in this Agreement, Licensee will, whenever in its sole discretion it is required or appropriate for the operation of its business, have the right, without notice to or consent of City, City Manager, or any other party, to assign all or any portion of its rights under this Agreement in whole or in part, to (a) any Affiliates as long as such entity has expertise in the operation of a Network Node, or provision of Wireless Services; (b) any entity with which the Licensee or an Affiliate of the Licensee shares joint ownership of the Network Nodes and ground equipment ; or (c) any entity that is a holder of a then-current Agreement. The Licensee shall give written notice to the City Manager within thirty (30) days of such assignment.

13.2. BUSINESS STRUCTURE AND ASSIGNMENTS

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

ARTICLE 14. INVENTORY AND INSPECTIONS.

14.1. INVENTORY RECORDS

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

14.2. INSPECTIONS

14.2.1. City representatives shall have the right to perform, or to have performed, (1) inspections of the records described in 14.1.1 and (2) inspections of all places in the Public Right-of-Way where work is undertaken in connection with this Agreement. Licensee shall keep its records described in 14.1.1 available for this purpose for at least four years after this Agreement terminates or expires. The inspection may be performed by City staff or third-party representatives engaged by the City. This provision does not affect the applicable statute of limitations.

14.2.2. In addition to other records or filings required hereunder or by Law, the Licensee shall maintain and provide access to a current map by either paper or electronic means, upon request by the City Manager or Director, showing the approximate locations of Network Nodes on Service Poles in the Right-of- Way.

14.2.3. The City Manager may reasonably require the keeping of additional records or accounts reasonably necessary to determine the Licensee's compliance with the terms of this Agreement.

14.3. CONFIDENTIAL INFORMATION

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

ARTICLE 15. MISCELLANEOUS

15.1. FORCE MAJEURE

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

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

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

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

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

15.2 DISPUTE RESOLUTION

15.2.1. In the event of a dispute between the Parties that arises during the Term of this Agreement, the Parties shall attempt to expeditiously and amicably resolve any dispute through good faith discussions in the ordinary course of business at the level at which the dispute originates.

15.2.2. If the Parties are not able to resolve the dispute in the ordinary course of business, the City Manager and representatives of other City departments that are involved in the dispute will meet with Licensee's authorized representative in an attempt to resolve the dispute.

15.2.4. Except in emergencies, no lawsuit under or related to this Agreement by one party against the other may be filed until at least a meeting has occurred between the City Manager and executives of the Network Provider with full authority to resolve the claims in the meeting or that are available contemporaneously with the meeting via live telephonic

communications where the parties agree to attempt in good faith to resolve or narrow the issues; and if not resolved, the parties agree that before initiating litigation, either party shall notify the other party of its intent to sue, and provide a copy of the draft pleading, with supporting facts and legal authorities at least fourteen (14) days before suit is filed.

15.2.5. This section does not apply to disputes that involve a question of law.

15.2.6. Notwithstanding the existence of any dispute between the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction or unless this Agreement terminates or expires under the terms provided herein.

15.3 ACCEPTANCE AND APPROVAL; CONSENT

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

15.4 REPRESENTATIONS AND WARRANTIES

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

15.4.1. *Organization, Standing and Power.* The Licensee is a Network Provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the State of Texas and in the City. The Licensee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted and to execute, deliver and perform this License and all other agreements entered into or delivered in connection with or as contemplated hereby.

15.4.2. *Truthful Statements.* The Licensee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its application for this Agreement were true and correct when made and are true and correct upon execution hereof.

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

15.5 STATEMENT OF ACCEPTANCE

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

15.6 RELATIONSHIP OF THE PARTIES

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

15.7 SEVERABILITY

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

15.8 ENTIRE AGREEMENT

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

15.9 WRITTEN AMENDMENT

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

15.10 APPLICABLE LAWS AND VENUE

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

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

15.10.2. Subject to the Parties' obligation to submit to the dispute resolution process or mediation as described in this Agreement, Licensee shall submit any and all litigation and legal proceedings between any of the Licensee and the City to the exclusive jurisdiction of the state or federal courts in the State of Texas and waive any objections or right as to forum non conveniens, lack of personal jurisdiction, or similar grounds. Venue for any litigation relating to this Agreement is Fort Bend County, Texas.

15.11 NOTICES

15.11.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I, Section 1.1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

15.11.2. Licensee shall address a copy to the Director at the address set out in Article I, Section 1.1 of all notices pertaining to Article 6 and 8 and other notices to the Director required under this Agreement.

15.11.3. Licensee shall address a copy to the City Attorney at the address set out in Article I, Section 1.1 of all notices pertaining to Article 15 and other notices to the City Attorney required under this Agreement.

15.12 CAPTIONS

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

15.13 NON-WAIVER

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

15.14 ENFORCEMENT

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

15.15 AMBIGUITIES

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

15.16 SURVIVAL

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

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

15.17 PARTIES IN INTEREST

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

15.18 REMEDIES CUMULATIVE

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

15.19 LICENSEE DEBT

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

15.20 PARTS INCORPORATED

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

15.21 CONTROLLING PARTS

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

[Signature Pages Follow]

IN WITNESS WHEREOF, the Original Signatories, through their duly authorized officers, have executed this Agreement in multiple counterparts, each of equal force and effect, effective as of the date signed by the City Manager.

LICENSEE/NETWORK PROVIDER:

Name:

Title:

Date Signed: _____

Tax Identification No.:

ATTEST/SEAL:

Name:

Date Signed. _____

Approved as to Form:

CITY:

CITY OF SUGAR LAND

Allen Bogard, City Manager

Date Signed. _____

ATTEST/SEAL:

City Secretary

APPROVED:

City Manager

Date Signed. _____