

ORDINANCE NO. 17-P

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 20, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES BY ADDING A NEW ARTICLE V. “NETWORK NODES” FOR THE PURPOSE OF UPDATING THE CITY’S RIGHT-OF-WAY MANAGEMENT ORDINANCE AND ADOPTING A DESIGN MANUAL TO COMPLY WITH CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

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

WHEREAS, during the 2017 legislative session, the Texas Legislature adopted Senate Bill 1004; and

WHEREAS, Senate Bill 1004 added Chapter 284 to the Local Government Code to regulate the deployment of network nodes for wireless services in public right-of-way; and

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

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

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

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:

Section 1. The foregoing recitals are adopted and incorporated into this ordinance as findings of fact.

Section 2. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public's safety and welfare.

Section 3. The City Council hereby approves the *City of Alvin, Texas, Wireless Services (Small Cells) Design Manual* ("the Design Manual", which is attached here as Exhibit "A.")

Section 4. The City Council hereby approves the *Pole Attachment Agreement*, which is attached here as Exhibit "B."

Section 5. That the Code of Ordinances, City of Alvin, Texas, Chapter 20, Streets & Sidewalks is hereby amended by adding a new article to read as follows:

"Chapter 20

...

ARTICLE V. NETWORK NODES

Sec. 20-43. Adoption of the Design Manual for the Installation of Network Nodes and Node Support Poles.

The City of Alvin's Design Manual for the Installation of Network Nodes and Node Support Poles pursuant to Texas Local Government Code, Chapter 284, is adopted to ensure that the City meets its fiduciary duty to the citizens of Alvin, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Section 6. Items not covered by this ordinance. Any item not covered by this ordinance and required by law shall be governed by the Texas Local Government Code and any other applicable state statute.

Section 7. Fees. The city council may create a schedule of fees for obtaining or renewing a wireless network permit pursuant to Chapter 284 of the Texas Local Government Code. These fees will be in amounts sufficient to cover the city's costs in issuing and renewing the permits, including, but not limited to, staff time and other overhead costs. These fees shall be adopted and placed in Chapter 28 of the Code of Ordinances.

Section 8. Enforcement. The city shall have the power to administer and enforce the provisions of this chapter as may be required by governing law including those remedies found in Chapter 284 of the Texas Local Government Code.

Section 9. Governing Law. This Ordinance shall be construed in accordance with Chapter 284 of the Texas Local Government Code (“the Code”) to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

Section 10. All other ordinances or parts of ordinances inconsistent or in conflict herewith, or to the extent of such inconsistency or conflict are hereby repealed.

Section 11. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 12. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting alcohol regulations within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 13. Publication. The City Clerk of the City of Alvin is hereby directed to publish this ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the Charter of the City of Alvin, Texas.

Section 14. It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

Section 15. Effective Date. This Ordinance shall become effective on September 1, 2017.

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

ATTEST:

CITY OF ALVIN, TEXAS:

By: _____
Dixie Roberts, City Secretary

By: _____
Paul A. Horn, Mayor

EXHIBIT A

City of Alvin, Texas
Wireless Services (Small Cells) Design Manual

I. Purpose

- A. The City of Alvin, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public Rights-of-Way for the health, safety, and welfare of the public to Texas municipalities.
- B. The City of Alvin encourages the deployment of state-of-the-art small cell wireless technology within the City for the many benefits it promises the citizens of Alvin including increased connectivity and reliable networks and services.
- C. Chapter 284 of the Texas Local Government Code (“Chapter 284”) allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined as “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles.”
- D. As expressly allowed by Chapter 284, the City enacts this *Wireless Services (Small Cell) Design Manual* (“Design Manual”) in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of technologically competitive equipment.
- E. The standards and procedures provided in this Design Manual are adopted to protect the health, safety, and welfare of the public by minimizing and reducing impacts to public safety within the City’s Rights-of-Way and to minimize and reduce impacts to the City, its residents and visitors; and for the general health and welfare of the public.
- F. This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications, or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.
- G. Providers shall adhere to the requirements found in Chapter 20, Streets and Sidewalks, of the City’s Code of Ordinances, and this Design Manual for the placement of their facilities within the City’s Right-of-Way.

II. Definitions

The definitions as used in Chapter 284 shall be used in this Design Manual, unless otherwise noted in this section. For purposes of this Design Manual, the following terms shall have the same meanings herein.

- A. “*Abandon*” and its derivatives means the 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 days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the network nodes and node support poles, or portion thereof, has the ability to provide communications.
- B. “*Building Board of Adjustments and Appeals*” means the five (5) member board appointed by City Council for the City of Alvin.
- C. “*City*” means the City of Alvin, Texas and the City’s officers and employees.
- D. “*Park*” means the various properties under the direction, control, and supervision of the City’s Director of the Parks and Recreation Department, pursuant to the authority granted by City Council and the City Code of Ordinances.
- E. “*Traffic Signal*” means any device, whether manually, electrically, or mechanically operated by which traffic is alternatively directed to stop and to proceed.

III. Permitting

3.1 Attachment to Existing Poles.

Existing Utility Poles (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment. Prior to installation or modification of a network node or node support pole, Provider shall complete and submit to the City a Right-of-Way Permit application, along with standard required documents and the following items:

- A. Permit fee, as authorized by Chapter 284.
- B. Aerial map showing the location of the existing pole to which the network node is proposed to be attached, and a street view image.
- C. Plans and drawings prepared by a professional engineer licensed in the State of Texas that has evaluated the existing pole or infrastructure for structural stability to carry proposed network nodes and can bear the wind load without pole modification or whether the installation will require pole re-enforcement. If pole re-enforcement is necessary, Provider shall provide engineering design and specification drawings for the proposed alteration to the existing pole. Any pole re-enforcement or replacement shall be at Provider’s sole cost. All re-enforcement or replacement poles shall match the character of the pre-existing pole in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences.

- D. Scaled dimensioned drawings or pictures of the proposed attachments of the network node to the existing poles or structures as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, and other existing light poles and any other poles or appurtenances. This shall include a before-and-after image of the pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, and its spacing from existing utilities. The drawings shall also show a sectional profile of the Right-of-Way and identify all existing utilities and existing utility conflicts.
- F. If a City pole is proposed, the City pole ID number shall be provided.
- G. The applicant needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other communications components. It shall be the responsibility of the Provider to evaluate, prior to making the application for the permit, the compatibility between the existing City infrastructure and the Provider's proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on City's public safety radio infrastructure.
- H. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- I. The City issued Right-of-Way permit authorizes use of its Right-of-Way. Providers/applicants are responsible for obtaining permission on non-city-owned infrastructure. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.
- J. Notification to adjacent residential developments/neighborhoods within three hundred (300) feet is required on all node attachments on City infrastructure.

The proposal shall comply with the following standards:

- A. Any facilities located off pole must remain in cabinetry or enclosed structure underground, except for the electric meter pedestal. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure.
- B. The electrical meter **shall not** be mounted on a City's metal pole or structure. Provider shall use 240 voltage when connecting to any City infrastructure and provide key to meter upon inspection.

- C. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway.
- D. All proposed projecting attachments to the pole shall provide a minimum vertical clearance of eight (8) feet. If any attachments are projecting towards the street side, for the safety and protection of the public and vehicular traffic, the attachment shall provide a minimum vertical clearance of no less than 16 feet above the ground. In addition, no protrusions from the outer circumference of the existing structure or pole shall be more than two (2) feet.
- E. The color of the network nodes shall match the existing pole color such that the network nodes blend with the color of the pole to the extent possible. City reserves the right to deny a certain style of node due to its difference in color to pole. Colors must be in strict accordance with the City's rights-of-way management ordinance, corridor land use ordinance, and other applicable ordinances, except to the extent inconsistent with Chapter 284.
- F. There shall be no other pole, with small cell attachments permitted within 300 feet of the subject pole, and there shall be no more than one (1) network node on any one pole.

3.2 **Installation of New Poles.**

Prior to installation or modification of a node support pole, Provider shall complete and submit to the City a permit application for the new pole, as well as a Right-of-Way Permit application. Along with standard required documents, the following items will also be required for the ROW Permit application:

- A. Permit fee, as authorized by Chapter 284.
- B. Map showing intended location of the node support pole. Aerial map showing the location of the proposed new pole, and a street view image.
- C. The applicant will need to provide analysis showing that the proposed new node support pole is spaced at least three hundred (300) linear feet from another existing pole that is capable of supporting network nodes along the proposed location, unless otherwise approved by the City in writing.
- D. Scaled dimensioned drawings or pictures of the proposed node support pole as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances. This shall include a before-and-after street view image. The after-image needs to include the proposed pole and all proposed attachments and associated standalone equipment.

- E. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, its spacing from existing lines. The drawings shall also show a sectional profile of the Right-of- Way and identify all existing utilities and existing utility conflicts.
- F. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- G. The applicant needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other communications components. It shall be the responsibility of Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on City's public safety radio infrastructure.
- H. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State. The City issued Right-of-Way permit authorizes use of its Right-of-Way. Providers/applicants are responsible for obtaining permission on non-city-owned infrastructure. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.
- I. Notification to adjacent residential developments/neighborhoods within 300 feet is required on all node support poles owned by provider.

The proposal shall comply with the following standards:

- A. Any facilities located off pole must remain in cabinetry or enclosed structure underground. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure. The electrical meter shall not be mounted on City's poles or structures. Provider shall use 240 voltage when connecting to any City infrastructure and provide key to meter upon inspection.
- B. The pole and all attachments to the pole that are projecting, or any equipment or appurtenance mounted on the ground shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway.
- C. Wooden poles are prohibited. All new poles are required to be break-away and black powder-coated. All attachments for the network nodes shall also match the color of the network support pole. All network support poles shall match the

existing poles in the surrounding block or district in which the network support pole is located in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences.

- D. Upon approval of the permit, the Provider shall call for locates. If City of Alvin Water Utility locates are needed, Provider is required to contact Alvin Water Utilities at <http://www.Alvin-tx.gov>

3.3 **Electrical Permit.**

- A. Provider shall be responsible for obtaining any required electrical power service to the network nodes and node support poles or structures. Provider's electrical supply shall be separately metered from the City and must match City infrastructure voltage.
- B. Provider shall provide City with the electrical permit and provide sealed engineered drawings for conduit size, circuit size, calculations for Amp, distances running, etc.
- C. The City shall not be liable to the Provider for any stoppages or shortages of electrical power furnished to the network nodes, network node facilities, node support poles, or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Provider of the structure, or for any other cause beyond the control of the City.

IV. Network Node and Node Support Pole Requirements

4.1. **Installation.**

Provider shall, at its own cost and expense, install the network nodes and node support poles in a good and workmanlike manner and in accordance with the requirements promulgated by the City's Right-of-Way Management Ordinance, the Design Manual, and all other applicable laws, ordinances, codes, rules and regulations of the City, the state, and the United States ("Laws"), 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 network nodes and node support poles shall be in compliance with all applicable Laws.

4.2. **Inspections.**

- A. The City may perform visual inspections of any network nodes and node support poles located in the Right-of-Way as the City deems appropriate without notice. If the inspection requires physical contact with the network nodes or node support poles, the City shall provide written notice to the Provider within

five (5) business days of the planned inspection. Provider may have a representative present during such inspection.

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

4.3. **Placement.**

- A. *Parks.* Placement of network nodes and node support poles in any Parks, Park roads, sidewalk, or park property (reflected in the map attached hereto as Exhibit A), is prohibited unless such falls within the definition of Public Right-of-Way in Chapter 284 of the Texas Local Government Code and the placement complies with applicable Laws, private deed restrictions, and other public or private restrictions on the use of the Park.
- B. *City Infrastructure.* Provider shall neither allow nor install network nodes or node support poles on any City property that falls outside the definition of Public Right-of-Way in Chapter 284 of the Texas Local Government Code.
- C. *Residential Streets.* Provider shall neither allow nor install network nodes or node support poles in Rights-of-Way that are adjacent to a street or thoroughfare that is not more than 50 feet wide and adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- D. *Historic District or Design District with Decorative Poles.* Provider shall neither allow nor install network nodes or node support poles or on Decorative Poles in Rights-of-Way that are within a Historic or Design District (reflected in the map attached hereto as Exhibit A), as defined by Chapter 284 of the Texas Local Government Code, unless approved by the City in writing. If approved, the City shall require reasonable design or concealment measures for the network nodes or node support poles. Any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed concealment measures in the permit applications, including the feasibility of using camouflage measures to improve the aesthetics of the network nodes, node support poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.
- E. *Poles.* Wireless Facilities on a node support poles shall be installed at least eight (8) feet above the ground. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of sixteen (16) feet.
- F. *Right-of-Way.* Node support poles and ground equipment shall be placed, as much as possible, within two (2) feet of the outer edge of the Right-of-

Way line. Node support poles and ground equipment or network nodes shall not impede pedestrian or vehicular traffic in the Right-of-Way. If a node support pole and ground equipment or network node is installed in a location that is not in accordance with the plans approved by the City and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Provider shall remove the node support poles, ground equipment or network nodes.

- G. The most preferable placement of network nodes and node support poles are in industrial areas, highway rights-of-way, and in retail and commercial areas, if those areas are not adjacent to a municipal park, residential area, historic district or design district.
- H. The City, by its discretionary consent and by agreement, may grant exceptions to the above prohibited locations, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284.

4.4 Fiber Connection.

- A. Provider shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its node support poles or network nodes.
- B. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of twelve (12) inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum twelve (12) inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe of avoid future damage.

4.5 Existing Water Lines.

No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least four (4) feet from the center line of the water line. When crossing a water line, a twelve (12) inch vertical or horizontal clearance must be maintained. Poles must be at least three (3) feet from a water line.

4.6 Existing Sewer Lines.

No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least four (4) feet from the center line of the sewer line. When crossing a sewer line, a twelve (12) inch vertical or horizontal clearance must be maintained. Poles must be at least three (3) feet from a sewer line.

4.7 **Existing Storm Drainage Lines.**

No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least four (4) feet from the center line of the storm drainage line. When crossing a storm drainage line, a twelve (12) inch vertical or horizontal clearance must be maintained. Poles must be at least three (3) feet from a storm drainage line.

4.8 **Generators.**

Provider shall not allow or install generators or back-up generators in the Right-of-Way, in accordance with Chapter 284.

4.9 **Equipment Dimensions.**

Provider's node support poles and network nodes shall comply with the dimensions set forth in Chapter 284.

4.10 **Tree Maintenance.**

Tree maintenance shall be in strict accordance with the City's Right-of-Way Management Ordinance, and other applicable ordinances, except to the extent inconsistent with Chapter 284. Provider, its contractors, and agents shall obtain written permission from the City before trimming trees hanging over its node support poles and network nodes to prevent branches of such trees from contacting node support poles and network nodes. When directed by the City, Provider shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Provider's actions under this section.

4.11 **Signage.**

Signage shall be in strict accordance with the City's Right-of-Way Management Ordinance, and other applicable ordinances, except to the extent inconsistent with Chapter 284.

- A. Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the node support poles and network nodes that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City.
- B. Except as required by Laws or by the utility pole owner, Provider shall not post any other signage or advertising on the node support poles and network nodes, or utility pole.

4.12 **Overhead Lines Prohibited.**

Provider shall neither allow nor install overhead lines connecting to node support poles. All overhead lines connecting to the node support pole where other overhead telecommunications or utility lines are or planned to be buried below ground as part of a project shall be buried below ground.

4.13 **Repair.**

Whenever the installation, placement, attachment, repair, modification, removal, operation, use, or relocation of the node support poles or network nodes, or any portion thereof is required and such installation, placement, attachment, repair, modification, removal, operation, use, or relocation causes any property of the City 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 property to its original condition within ten (10) calendar days. If Provider does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon fifteen (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.

4.14 **Graffiti Abatement.**

- A. Graffiti abatement shall be in strict accordance with the City's Right-of-Way Management Ordinance, and other applicable ordinances, except to the extent inconsistent with Chapter 284.
- B. As soon as practical, but not later than fourteen (14) days from the date Provider receives notice thereof, Provider shall remove all graffiti on any of its node support poles and network nodes located in the Right of Way.

4.15 **Inventory.**

- A. Provider shall maintain a list of its network nodes and node support poles and provide City an Inventory of locations within ten (10) days of installation. The Inventory of network nodes and node support poles shall include GIS coordinates, date of installation, City pole ID number (if applicable), type of pole used for installation, pole owner, and description/type of installation for each network node and node support pole installation.
- B. Upon City's written request, Provider shall provide a cumulative Inventory within thirty (30) days of City's request. Concerning network nodes and node support poles that become inactive, the Inventory shall include the same information as active installations in addition to the date the network node and/or node support

pole was deactivated and the date the network node and/or node support pole was removed from the Right-of-Way. City may compare the Inventory to its records to identify any discrepancies.

4.16 **Reservation of Rights.**

- A. The City reserves the right to install, and permit others to install, utility facilities in the Rights-of-Way. In permitting such work to be done by others, the City shall not be liable to Provider for any damage caused by those persons or entities.
- B. The City reserves the right to locate, operate, maintain, and remove City traffic signal poles in the manner that best enables the operation of its traffic signal system and protect public safety.
- C. The City reserves the right to locate, operate, maintain, and remove any City pole or structure located within the Right-of-Way in the manner that best enables the City's operations.

4.17 **Coordination of Traffic Signal Maintenance Activities and Emergency Response.**

Provider will provide City a key to each meter box at the time of inspection and have the ability to temporarily cut-off electricity to its facilities for the safety of maintenance personnel. In the event of failure of components of the traffic signal system for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks, City will respond to restore traffic signal operations as a matter of public safety. Should the events that result in damage or failure of the traffic signal system also affect Provider's network nodes, Provider shall have the sole responsibility to repair or replace its network nodes and shall coordinate its own emergency efforts with the City.

V. Interference with Operations.

5.1 **No Liability**

- A. The City shall not be liable to Provider for any damage caused by other Providers with Wireless Facilities sharing the same pole or for failure of Provider's network nodes for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks.
- B. The City shall not be liable to Provider by reason of inconvenience, annoyance or injury to the network nodes or node support poles or activities conducted by Provider therefrom, arising from the necessity of repairing any portion of the Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Right-of-Way, or in, or to, City's fixtures, appurtenances or equipment. The City will use reasonable efforts not to cause material interference to Provider's operation of its network nodes or node support poles.

5.2 **Signal Interference with City's Communications Infrastructure Prohibited.**

- A. No interference. In the event that Provider's network nodes interferes with the City's traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Provider shall promptly cease operation of the network nodes causing said interference upon receiving notice from the City and refrain from operating. Provider shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.
- B. Protocol for Responding to Event of Interference. The protocol for responding to events of interference will require Provider to provide the City an Interference Remediation Report that includes the following items:
 - 1. Remediation Plan. Devise a remediation plan to stop the event of inference;
 - 2. Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and
 - 3. Additional Information. Include any additional information relevant to the execution of the remediation plan.
- C. In the event that interference with City facilities cannot be eliminated, Provider shall shut down the network nodes and remove or relocate the network node that is the source of the interference as soon as possible to a suitable alternative location made available by City.
- D. 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 it does not interfere with the City's Operations.

VI. Abandonment, Relocation and Removal

6.1 **Abandonment of Obsolete Network Nodes and Node Support Poles.**

Provider shall remove network nodes and node support poles when such facilities are abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of ninety (90) days of the network nodes and node support poles being abandoned or within ninety (90) days of receipt of written notice from the City. When Provider removes or abandons permanent structures in the Rights-of-Way, the Provider shall notify the City in writing of such removal or abandonment and shall file with the City the location and description of each network node or node support pole removed or

abandoned. The City may require the Provider to complete additional remedial measures necessary for public safety and the integrity of the Rights-of-Way.

6.2 **Relocation and Removal at Provider's Expense.**

1. Provider shall remove and relocate its network nodes and node support poles at its own expense to an alternative location not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of the network nodes and/or node support poles is necessary due to:
 1. Construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project or other public improvement project; or
 2. Maintenance, upgrade, expansion, replacement, removal or relocation of the City's pole or structure upon which Provider's network nodes are attached; or
 3. The network node or node support pole, or portion thereof, is adversely affecting proper operation of traffic signals, streetlights or other City property;
 4. Closure of a street or sale of City property; or
 5. Projects and programs undertaken to protect or preserve the public health or safety; or
 6. Activities undertaken to eliminate a public nuisance; or
 7. Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its network nodes or node support poles; or
 8. Duty otherwise arising from applicable law.
2. Provider's duty to remove and relocate its network nodes and node support poles at its expense is not contingent on the availability of an alternative location acceptable for relocation. City will make reasonable efforts to provide an alternative location within the Rights-of-Way for relocation, but regardless of the availability of an alternative site acceptable to Provider, Provider shall comply with the notice to remove its network nodes and node support poles as instructed.
3. The City may remove the network node and/or node support pole if provider does not remove such within one hundred twenty (120) days. In such case, Provider shall reimburse City for the City's actual cost of removal of its network nodes and node support poles within thirty (30) days of receiving the invoice from the City.

6.3 **Removal or Relocation by Provider.**

1. If the Provider removes or relocates at its own discretion, it shall notify the City in writing not less than ten (10) business days prior to removal or relocation. Provider shall obtain all Permits required for relocation or removal of its network nodes and node support poles prior to relocation or removal.
2. The City shall not issue any refunds for any amounts paid by Provider for network nodes and node support poles that have been removed.

6.4 **Restoration.**

Provider shall repair any damage to the Right-of-Way, and the property of any third party resulting from Provider's removal or relocation activities (or any other of Provider's activities hereunder) within ten (10) days following the date of such removal or relocation, at Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Provider was granted a Permit for the applicable location, 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.

6.5 **Provider Responsible.**

Provider shall be responsible and liable for the acts and omissions of Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub lessees, and subcontractors in connection with the performance of activities within the City's Right-of-Way, as if such acts or omissions were Provider's acts or omissions.

VII. Penalties and Remedies

- 7.1 Improperly located network node facilities, node support poles, and related ground equipment shall not impede pedestrian or vehicular traffic in the Rights-of-Way. If any network node facilities, node support poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City, impedes pedestrian or vehicular traffic, or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.
- 7.2 The City shall give Provider thirty (30) days' notice to remove and relocate the improperly located network facilities, node support poles or related ground equipment that are located in the incorrect permitted location. If not relocated, Provider shall be subject to a penalty of \$500.00 per day until the network node facilities, node support poles, or related ground equipment are relocated to the correct area within the permitted location, regardless of whether or not the Provider's contractor, subcontractor, or vendor installed the network

node facilities, node support poles, or related ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

VIII. Insurance, Indemnity, Bonding and Security Deposits

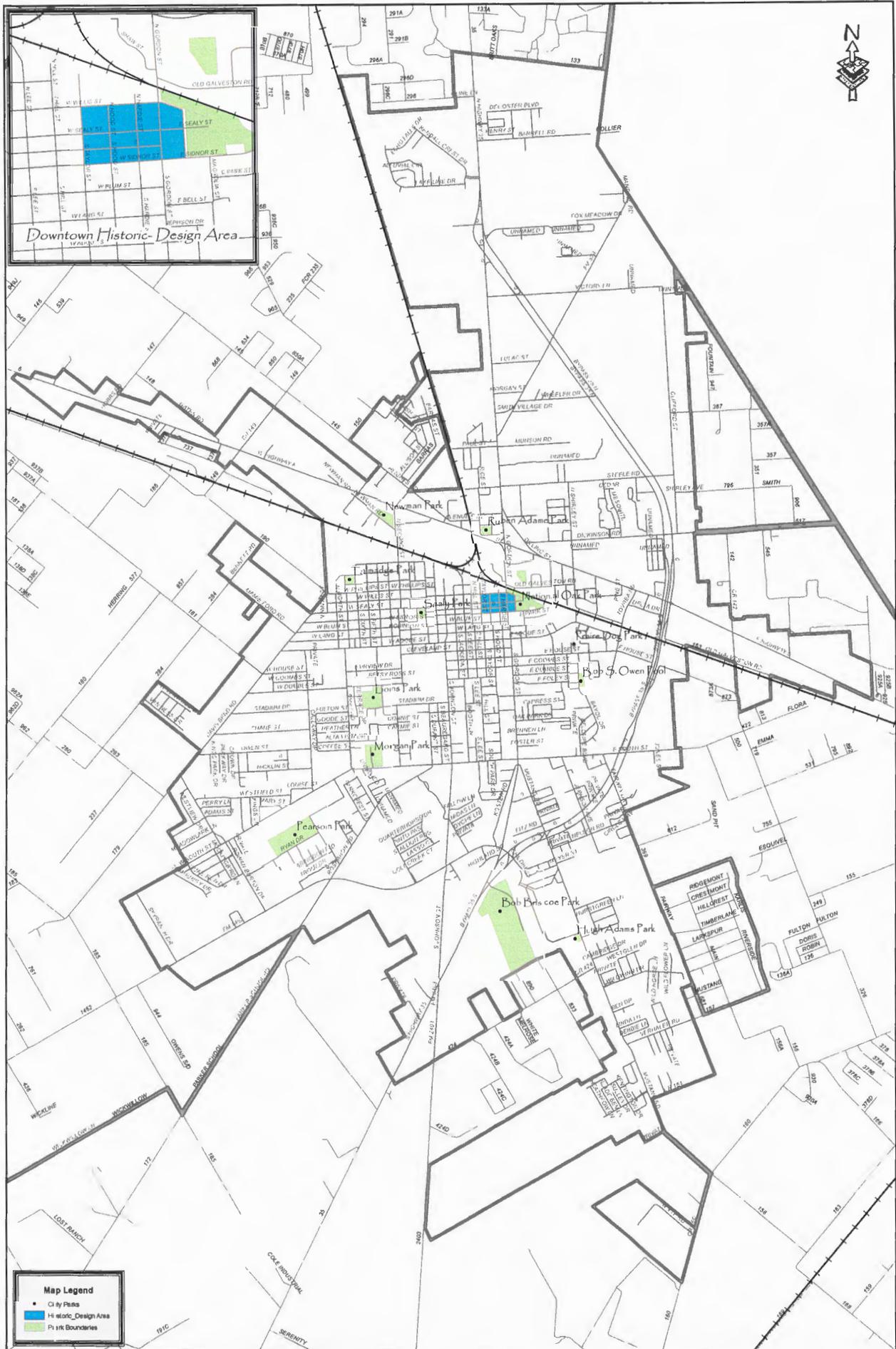
- 8.1 Insurance, bonding and security deposits shall be in strict accordance with the City’s Right-of-Way Management Ordinance, and other applicable ordinances, except to the extent inconsistent with Chapter 284.
- 8.2 Indemnity shall be in accordance with Chapter 284, as provided for in Section 283.057 (a) and (b) of the Texas Local Government Code.

IX. Administrative Hearing – Request for Exemption

- 9.1 Should the Provider desire to deviate from any of the standards set forth in the Design Manual, the Provider may request a Hearing before the Building Board of Adjustments and Appeals (the “BBOAA”). The process for an application, hearing and vote shall follow the process set out for a variance, in accordance with applicable City ordinances.

X. Design Manual – Updates

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



Communication Node Ordinance Map
EXHIBIT A

EXHIBIT B

2. The Network Provider acknowledges that it has received and reviewed the applicable provisions in the City Design Manual and the Right-of-Way Management Ordinance; and further acknowledges that this Pole Attachment Agreement is subject to the terms and regulations of each.

3. The Network Provider agrees to pay the City for collocation of its Network Nodes at the following annual rates:

- a. City Service Poles: \$20.00 per year per service pole.
- b. City Utility Poles: An annual pole attachment rate applied on a per-foot basis consistent with Section 54.024 of the Texas Utilities Code.

4. The City acknowledges that it will comply with the requirements of the Code and that it will allow the collocation of Network Nodes on the City service and utility poles on a non-exclusive, nondiscriminatory basis, subject to the Network Provider paying the applicable fees to the City and complying with the Design Manual and the Right-of-Way Management Ordinance.

5. Pursuant to Section 284.301 of the Texas Local Government Code, the Network Provider agrees that the City is authorized to enforce all of the City's regulations that do not materially interfere with the use of Network Nodes.

6. The primary term of this Agreement shall be five (5) years commencing upon the effective date first set forth above. This Agreement shall be automatically renewed and extended for subsequent one (1) year terms unless at least sixty (60) days prior to the expiration of the term either party shall give written notice to the other of the party's intent to terminate the Agreement at the end of the current term.

7. Any notice required or permitted under this Agreement shall be in writing and shall be delivered in hand or by registered or certified US mail. Notice to the Network Provider and the City may be addressed as follows:

To the Provider:

To the City:

City of Alvin
City Manager
216 West Sealy
Alvin, Texas 77511

8. This Agreement may be enforced by Network Provider or City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the Agreement thereafter.

9. If any provision contained in this Agreement is held unconstitutional, invalid or unenforceable, then the remaining provisions shall be deemed severable and shall remain in full force and effect.

10. This Agreement shall be governed by the law of the State of Texas and construed in conformity with the provisions of Texas Local Government Code, Chapter 284. Venue shall lie in Alvin, Brazoria County, Texas.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement effective as of the date first set forth above.

CITY OF ALVIN, TEXAS

Paul A. Horn, Mayor

Dated: _____

ATTEST:

Dixie Roberts, City Secretary

NETWORK PROVIDER:

Signature of Authorized Officer

Title of Authorized Officer

Dated: _____