

TEXAS LOCAL GOVERNMENT CODE CHAPTER 284

NETWORK NODES INSTALLATION AND
POLE ATTACHMENT AGREEMENT

THE STATE OF TEXAS

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COUNTY OF DENTON

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THIS AGREEMENT is made and entered into pursuant to Section 284.056, Section 284.201, and Section 284.301 of the Texas Local Government Code, effective this _____ day of _____ 20____ (the "Effective Date"), by and between the **CITY OF THE COLONY, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "city"), and _____, a Texas _____ (hereinafter referred to as the "Network Provider"), and is as follows:

WHEREAS, the Network Provider is a wireless telecommunications *network provider* as that term is defined in Section 284.002 of the Texas Local Government Code (the "Code"); and

WHEREAS, the City owns certain public rights-of-way with service and or utility poles within its municipal territorial limits; and

WHEREAS, the Network Provider desires to install new *Network Nodes*, *Network Support Poles* in the City right-of-way or attach certain *Network Nodes*, as those terms are defined in Section 284.002 of the Texas Local Government Code, on City-owned service poles and/or utility poles; and

WHEREAS, the Network Provider and the City desire to enter into this Agreement to secure authority from the City for the Network Provider to install Network Nodes, Node Support Poles in the right-of-way, and certain Network Nodes on such City poles, subject to the City's Wireless Services (Small Cell) Design Manual for the Installation of Network Nodes and Node Support Poles ("the Design Manual") and the City's Right-of-Way Management Ordinance; and

WHEREAS, this Agreement is entered into pursuant to Chapter 284 of the Texas Local Government Code, in order to address the desires of the Network Provider and the procedures of the City; and

WHEREAS, the Network Provider and the City acknowledge that this Agreement is binding upon the City and the Network Provider and their respective successors and assigns for the term (defined below) of this Agreement; and

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Network Provider agree as follows:

1. **Location of New Network Nodes in City right-of-way or on City Poles.** The location of new network poles to be installed in City right-of-way or on Service and/or Utility Poles owned by the City on which the Network Nodes are to be attached by the Network Provider are generally described as:

2. The Network Provider acknowledges that it has received and reviewed the applicable provisions in the City Wireless Service (Small Cell) Design Manual and the Right-of-Way Management Ordinance; and further acknowledges that this Network Node Installation and 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:

Annual Rental Fee:

Network Nodes.....\$250/node

Pole Attachment Rent\$20/pole
(Network Node on Service Pole)

*Transfer Facility \$28 per month/Each
Network Node

* No rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

** During a partial year, fees will be prorated based on the city's Fiscal year.

As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice. Based line rate is February 2017

(CPI-U = 243.603)

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. **Miscellaneous Provisions.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Network Provider warrants and represents that the individual or individuals executing this Agreement on behalf of Network Provider has full authority to execute this Agreement and bind Network Provider to the same. The City warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

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

CITY:

CITY OF THE COLONY, TEXAS,
a Texas home-rule municipality

By: _____
Joe McCourry, Mayor

Date: _____

STATE OF TEXAS

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COUNTY OF DENTON

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This instrument was acknowledged before me on the ____ day of _____, 2018, by Joe McCourry, Mayor of the City of The Colony, Texas, on behalf of the City of The Colony, Texas.

Notary Public, State of Texas

ATTEST:

Tina Stewart, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

NETWORK PROVIDER:

_____,
a Texas _____

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS

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COUNTY OF DENTON

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This instrument was acknowledged before me on the ____ day of _____, 2018, by _____
_____, _____ of _____,
Texas _____, on behalf of said _____.

Notary Public, State of Texas