

**REGULAR CALLED CITY COUNCIL MEETING  
October 19, 2017**

MINUTES OF THE REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT WAS HELD **OCTOBER 19, 2017** AT 7:00 PM IN THE COUNCIL CHAMBERS, CITY HALL, 1200 SOUTH COMMERCE, OVERTON, TEXAS.

**PRESENT:**

C. R. Evans Jr., Mayor  
Jerry Clark  
Lawrence Davis  
John Posey  
Michael Paul Williams

**ABSENT:**

Philip Cox, Mayor Pro Tem

Also in attendance were, Clyde Carter, Police Chief, Wendy Bates, City Comptroller, and Rachél Gafford, City Secretary representing staff. Skipper Honeycutt and Dudley Hickman representing the Overton Planning & Zoning Commission; Scott Cargil and Brian Wilkinson representing Champion EMS; Jean Beth Hamblen, Doris Hoover, Elsie Hollis and Betty Clark representing the Queen Price Garden Club; Rev. Adkins and Brother Kennedy representing El Bethel Missionary Baptist Church and several others were present representing the public.

**I. CALL TO ORDER** – Mayor Evans called the meeting to order at 7:00 pm

1. Invocation was given by *Councilman Posey*.
2. Pledge of Allegiance was led by *Dudley Hickman*.

**II. PROCLAMATION / RECOGNITION /APPOINTMENTS**

1. *Mayor Evans presented a proclamation to Reverend Tony Adkins honoring the congregation of El Bethel Missionary Baptist Church and designating Sunday, November 19, 2017 as “El Bethel Missionary Baptist Church – 167<sup>th</sup> Anniversary Day”.*

**III. OATH OF OFFICE FOR P & Z COMMISSION APPOINTEES**

1. *Mayor Evans administered the Statement of Officer and the Oath of Office to Planning & Zoning Commissioners Skipper Honeycutt and Dudley Hickman.*

**IV. CITIZEN FORUM**

1. No citizens requested to speak during Citizens Forum

**V. CITIZEN’S REQUEST**

1. Report from the “Queen Price Garden Club” on the “Light Up Overton” project.

*Jean Beth Hamblen formally requested assistance from City Staff and members of Council for the installation of the Christmas lights and Christmas scenes along the greenway the week of November 15, 2017.*

## **VI. CONSENT AGENDA**

### ***Mayor Evans introduced the Consent Agenda items***

1. Approval of the minutes from the September 14, 2017 City Council Regular Called Meeting.
2. Approval of **RESOLUTION NO. 2017-10-19A** authorizing the Mayor to enter into an Interlocal Cooperation Purchasing Contract for General Store Supplies with the Texas Department of Public Safety.
3. Approval of **RESOLUTION NO. 2017-10-19B** ratifying the **Overton Municipal Development District (OMDD) Budget for FY 2017-18.**
4. Approval of **RESOLUTION NO. 2017-10-19C** ratifying the **Overton Economic Development Corporation (OEDC) Budget for FY 2017-18.**

**Councilman Davis made a motion to approve Consent Agenda as submitted.**

**Councilman Posey seconded the motion.**

**Mayor Evans called for a vote.**

**Motion carried 4– 0 – 0; Mayor Pro Tem Cox absent**

***Mayor Evans stated that if there were no objections then he would like to skip to Item IX.2 and hear the monthly report from Champion EMS.***

## **IX. BUSINESS**

2. City Council to hear and discuss September 2017 Overton Monthly Call / Response Time report from Brian Wilkinson and Scott Cargill of Champion EMS.

***Brian Wilkerson presented the monthly report from Champion EMS regarding the September number of calls responded to and response times for these calls within the City of Overton. Wilkerson explained the Overton Ambulance may go to Kilgore to cover a call if the other 3 Kilgore units are also on calls, which is why Gladewater or Longview is shown on our report sometimes as having responded to a call in Overton. The Ambulance moves to a location to cover the area strategically to where the area is covered, the Ambulance does not always stay just inside the City. This practice is normal and is within the scope of the contract.***

***Councilman Posey noted that some of the Non-Life Emergencies had response times of 0.00 which would totally skew the actual response times by them being listed on the report and asked for clarification as to why response times of 0.00 were listed and calculated into the overall response calculation. Posey also requested explanation on the calls as to why there were some 14 to 18-minute response times when 15 minutes could be the difference of life or death.***

***Wilkerson responded that he would have to do some further investigation and promised to return the following month with some explanations.***

*Mayor Evans stated that we would return to Agenda Item VI. Executive Session.*

**VII. CONVENE TO EXECUTIVE SESSION**

*City Council recessed into Executive Session at 7:28 PM. to discuss the following matters as authorized by §551.074 of the Texas Government Code – regarding personnel matters including the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.*

1. City Council to hear, review, consider and/or take action on adoption of **ORDINANCE NO. 2017-10-19A**, an Ordinance of the City Council of the City of Overton amending Chapter 35 Defining the Office of City Manager; providing for the term of office; prescribing the duties pertaining to that office; providing for and creating the position of Interim City Manager in the absence or resignation of a City Manager; appointment of an Interim City Manager for the City of Overton and providing for compensation of said position.

*City Council adjourned to Executive Session and return to the Diaz at 7:59 PM.*

**VIII. RECONVENE IN OPEN SESSION**

*City Council reconvened in Open Session at 7:59 PM. to consider and take action on the Agenda Item VI.1*

**Councilman Posey made a motion to approve ORDINANCE NO. 2017-10-19A, Section 1 to amend the City of Overton Code of Ordinances Chapter 35 as submitted.**

**Councilman Davis seconded the motion.**

**Mayor Evans called for a vote.**

**Motion carried 4– 0 – 0; Mayor Pro Tem Cox absent**

**Councilman Clark made a motion to approve ORDINANCE NO. 2017-10-19A, Sections 2 and Section 3; appointing Police Chief Clyde Carter as Interim City Manager of the City of Overton until further notice; and setting the compensation for Clyde Carter as his current annual salary of \$52,416.00 (with benefits) plus a 25% bi-weekly stipend in the amount of \$504.00 for as long as he performs the duties of Interim City Manager.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for a vote.**

**Motion carried 4– 0 – 0; Mayor Pro Tem Cox absent**

**IX. BUSINESS**

1. Present revised meeting schedule for the City Council as updated October 16, 2017.
  - a. Mayor to receive request, if any, for leave of absence from any Council Member for future meetings

*Mayor Evans stated that he would like to schedule a Special Called Meeting for Thursday, October 26, 2017 at 7 PM if the members of Council could confirm that a Super Quorum of four (4) members of Council could be present so that Council could approve the Minutes so that the Bank could have a copy of the "Approved Minutes" so that the signers for the City's Bank Account could be made.*

*All members of Council present at the meeting confirmed that they would be able to attend the Special Called Meeting as requested.*

3. City Council to review, consider and take action regarding **RESOLUTION NO. 2017-10-19D**, a Resolution of the City Council of the City of Overton, Texas providing for authorized signatures on the City of Overton bank accounts and investment accounts, and providing for an effective date.

*City Comptroller Bates presented Resolution No. 2017-10-19D stating that the motion made by Council would need to specifically include the names of the individuals to be removed from the City's bank account as well as the names of the individuals to be added to the signature card. Bates also stated that she had discovered that when staff had consolidated the City's bank accounts in 2014 and 2015 they had inadvertently closed the Police Bank Account that included the Police Department's Seizure Funds. By law that account has to be a separate account and the motion should include authorization for creating of a seizure account and naming the authorized personnel to be listed on the signature card for that account.*

**Councilman Davis made a motion to remove from the signature card the following people: Pamela Raney and Charles Cunningham, to add to the signature card the following people: Clyde Carter, Interim City Manager, and Wendy Bates, City Comptroller, to the City of Overton bank accounts at Texas Bank and Trust by the approval of RESOLUTION NO. 2017-10-19D, and to authorize the City staff to create and add a separate Police Seizure bank account authorizing the following people to be listed on said account: C. R. Evans, Jr., Mayor, Clyde Carter, Chief of Police/Interim City Manager, Wendy Bates, City Comptroller and Rachél Gafford, City Secretary.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for discussion; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4 – 0 – 0; Mayor Pro Tem Cox absent**

4. City Council to review, consider and take action regarding **RESOLUTION NO. 2017-10-19E**, a Resolution of the City Council of the City of Overton, Texas authorizing The issuance and use of City Credit Cards for the day to day operations of the City of Overton by the City Manager, City Secretary, City Comptroller, Chief Of Police, Code Enforcement Officer / Public Relations Officer, Utilities Superintendent and Chief of the Volunteer Fire Department; setting a maximum credit limit not to exceed two thousand five hundred (\$2,500.00) dollars per month per card; and establishing specific items authorized to be purchase with the use of these credit cards.

*City Comptroller Bates presented Resolution No. 2017-10-19E stating that the Resolution would authorize the closing of the two credit cards that were issued to former employees Cunningham and Raney as well as approve the issuance of City Credit Cards to the current City Staff department heads as listed including herself and add a credit card to be issued to Janice Bagley the Code Enforcement Officer / Public Relations Officer of the Overton Police Department which would assist her in more efficiently performing her duties such as for the mailing of certified letters as well as making purchases for various events.*

**Councilman Posey made a motion to approve RESOLUTION NO. 2017-10-19E as submitted authorizing the issuance of City Credit Cards to authorized staff positions and closing the credit cards that were issued to Pamela Raney and Charles Cunningham.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for discussion; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4– 0 – 0; Mayor Pro Tem Cox absent**

5. City Council to review, consider and take action regarding **RESOLUTION NO. 2017-10-19F**, a Resolution by the City of Overton, Texas (“City”) authorizing the city to participate as part of The Cities Advocating Reasonable Deregulation (“CARD”) in proceedings related to Southwestern Electric Power Company’s (“SWEPCO”) application to reconcile fuel costs submitted on or about August 28, 2017; authorizing the hiring of attorneys and consultants; directing the activities of lawyers and consultants regarding SWEPCO’s application; requiring reimbursement of reasonable legal and consultant expenses; finding that the meeting complies with the Open Meetings Act; and making other findings and provisions related to the subject.

*City Comptroller Bates presented Resolution No. 2017-10-19F.*

**Councilman Posey made a motion to approve RESOLUTION NO. 2017-10-19F as submitted.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for discussion.**

***Councilman Davis started the discussion by requesting more information regarding cost associated with participation in the lawsuit. In summary, the discussion produced the following questions from City Council:***

- 1. What other Cities have passed the proposed Resolution or who have stated their intention to pass the Resolution and join the class action lawsuit.***
- 2. What would the estimated attorney fees be (monthly and in total) that the City of Overton may be billed for from your firm if they choose to pass this Resolution and join the class action lawsuit?***
- 3. It is our understanding that the City would be able to submit the invoices from your firm to SWEPCO for reimbursement. Is this correct?***
- 4. What assurance does the City have that SWEPCO will actually reimburse the City for the legal fees after payment; could you respond on how quickly the fees would be reimbursed to the City from SWEPCO?***
- 5. Please confirm that the billable time that will be charged by our City Attorney to review the documentation of this case will also be reimbursable by SWEPCO.***

**Councilman Davis made a motion to postpone any action on the motion to approve RESOLUTION NO. 2017-10-19E until the next scheduled meeting of the Council on Thursday, October 26, 2017 further requesting that staff contact the CARD Attorney (Alfred Herrera) to obtain responses to the questions as listed above.**

**Councilman Clark seconded the motion.**

**Mayor Evans called for discussion on the motion to postpone; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4 – 0 – 0; Mayor Pro Tem Cox absent**

- 6. City Council to hear, review, consider and/or take action on adoption of **ORDINANCE NO. 2017-10-19B**, an Ordinance of the City Council of the City Of Overton, Texas, amending Title VII General Regulations by the addition of Chapter 79 entitled “Discharge of Firearms” to the City of Overton Code of Ordinances, defining terms, prohibiting the discharge of firearms and air-guns within the city, providing for exceptions, and providing a penalty; containing a cumulative clause; containing a savings and severability clause; ordering publication; declaring an effective date; and providing other matters related to the subject.**

***Interim City Manager / Chief Carter presented Ordinance No. 2017-10-19B for adoption stating that although the City Secretary had found where Council had previously adopted a Discharge of Firearms ordinance in the past; it had been somehow repealed when the current Code of Ordinances were adopted by City Council in 2001 and it was just recently discovered. The Ordinance as presented to Council is more comprehensive to include a good amount of reasonable exceptions that were not present in the previous Ordinance that was repealed.***

**Councilman Davis made a motion to approve ORDINANCE NO. 2017-10-19B as submitted.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for discussion; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4- 0 - 0; Mayor Pro Tem Cox absent**

7. City Council to hear, review, consider and/or take action on adoption of **ORDINANCE NO. 2017-10-19C**, A Public Right-Of-Way Management Ordinance by the City Council of the City of Overton, Texas; regulating the physical use, occupancy and maintenance of City Rights-Of-Way by Wireless Network Providers; describing the purpose; providing definitions; requiring compliance with the City Design Manual and applicable codes for the installation of network nodes and node support poles pursuant to Chapter 284 of the Texas Local Government Code; providing City Procedures for applications for permits; establishing time periods for approval of permit applications; providing application fees and Annual Public Right-Of-Way rental rates; providing restrictions on placement of network nodes and node support poles in Municipal Parks, Residential Areas, Historic Districts and Design Districts; providing indemnity for the City; providing repealing and severability clauses; proving a Texas Open Meetings Act clause; and providing an effective date of October 19, 2017.

*City Comptroller Bates presented Ordinance No. 2017-10-19C for adoption.*

**Councilman Posey made a motion to approve ORDINANCE NO. 2017-10-19C as submitted.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for discussion; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4 - 0 - 0; Mayor Pro Tem Cox absent.**

8. City Council to hear, review, consider and/or take action on adoption of **ORDINANCE NO. 2017-10-19D**, an Ordinance by the City of Overton, Texas, approving a Design Manual for the installation of network nodes and node support poles; and approving a Pole Attachment Agreement regulating the installation of network nodes On City service poles and utility poles; declaring Governing Law; providing repealing and savings clauses; providing a Texas Open Meetings Act Clause; and providing an effective date of October 19, 2017.

*City Comptroller Bates presented Ordinance No. 2017-10-19D for adoption.*

**Councilman Davis made a motion to approve ORDINANCE NO. 2017-10-19C as submitted.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for discussion; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4 – 0 – 0; Mayor Pro Tem Cox absent.**

9. City Council to review, consider and take action regarding **RESOLUTION NO. 2017-10-19G**, a Resolution of the City Council of the City of Overton, Texas designating the Henderson Daily News as the official newspaper for the City of Overton, Texas and the Tyler Morning Telegraph as the official support newspaper of the City of Overton, Texas; providing for an effective date hereof.

*City Secretary Gafford presented Resolution No. 2017-10-19D for adoption.*

**Councilman Posey made a motion to approve RESOLUTION NO. 2017-10-19G as submitted.**

**Councilman Davis seconded the motion.**

**Mayor Evans called for discussion; there was no additional discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4 – 0 – 0; Mayor Pro Tem Cox absent.**

#### **X. CITY ADMINISTRATION'S MONTHLY REPORTS**

*Mayor Evans introduced the following departmental reports for review and discussion by Council.*

1. Fire Department Monthly Report
2. Police Department Monthly

*Interim City Manager / Chief Carter presented the monthly reports for both the Fire Department and Police Department.*

3. Department of Finance Monthly Report

*City Comptroller Bates presented documentation of the City's current financial condition including the September 2017 Statement of Revenues, the September 2017 Check Register and documentation of outstanding and upcoming vendor invoices as of 10/9/2017 totaling approximately \$230,000.00 (Attachment K) which were discovered during her assumption of the Accounts Payable duties resulting from the dismissal of the former Finance Director. Bates went on to state that although not all of the invoices were past due, the former City Manager was led to believe that all outstanding invoices had been entered and the City was current on all accounts when he prepared the current budget. Therefore, the September reports presented are not accurate as many items had not been booked or posted and Bates stated that she fully anticipated that it would take until at least December to get all of the items found, entered and posted correctly. Furthermore, she had contacted the vendors that had the largest outstanding balances to make payment plan arrangements to get the City's account current.*

4. City Manager's Monthly Report



*No City Manager report was submitted or presented to City Council due to the resignation of the City Manager as of October 13, 2017*

**XI. ADJOURNMENT**

**Councilman Davis made a motion to approve ORDINANCE NO. 2017-10-19C as submitted.**

**Councilman Williams seconded the motion.**

**Mayor Evans called for a vote.**


**Motion carried 4 – 0 – 0; Mayor Pro Tem Cox absent.**

With no further business, the meeting was adjourned at **9:13 PM**

Minutes submitted, approved and/or corrected this **26<sup>th</sup>** day of **October, 2017.**



CITY OF OVERTON

  
C. R. Evans, Jr., MAYOR

ATTEST:

  
Rachel Gafford, CITY SECRETARY

**ATTACHMENT A**  
**Res No. 2017-10-19A- Interlocal Contract with DPS General Stores**

City of Overton, TX

Resolution No. 2017-10-19A  
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**RESOLUTION NO: 2017-10-19A**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL COOPERATION CONTRACT FOR GENERAL STORE SUPPLIES WITH THE TEXAS DEPARTMENT OF PUBLIC SAFETY THAT AUTHORIZES THE CITY TO PURCHASE CERTAIN PUBLIC SAFETY RELATED SUPPLIES AND MATERIALS UNDER TERMS AND CONDITIONS SPECIFIED IN THE INTERLOCAL COOPERATION CONTRACT; PROVIDING FOR AN EFFECTIVE DATE HEREOF AND AN EXPRIATION DATE AS SPECIFIED HEREWITHIN.**

**WHEREAS**, the City of Overton has entered into an Interlocal Agreement with the Texas Department of Public Safety in the past to purchase certain supplies and materials used in law enforcement by the City; and

**WHEREAS**, the City has hereby received notice that the term of the previous Interlocal Agreement expired on August 31, 2017; and

**WHEREAS**, the City Council of the City of Overton has determined that it is the best interest of the City to continue to accrue the advantages offered by entering into said Purchasing Agreement with the Texas Department of Public Safety; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS:**

**SECTION 1.** That the City Council of the City of Overton, Texas hereby authorizes the Mayor to execute said Interlocal Cooperation Contract on behalf of the City as attached hereto EXHIBIT A; and

**SECTION 2.** That the City Council of the City of Overton, Texas hereby approves entering into a Interlocal Cooperation Contract with the Texas Department of Public Safety under the terms and conditions of the Contract which is attached hereto as EXHIBIT A and incorporated herein for all purposes; and

City of Overton, TX

Resolution No. 2017-10-19A  
Page 2 of 4

**SECTION 3:** The Resolution shall become effective immediately once executed by all parties with an expiration date of August 31, 2021.

DULY APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS 19<sup>TH</sup> DAY OF OCTOBER, 2017.

CITY OF OVERTON, TEXAS



*C.R. Evans Jr.*  
C.R. Evans Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

**INTERLOCAL COOPERATION CONTRACT  
DPS GENERAL STORES  
P.O. BOX 15999  
AUSTIN, TEXAS 78761-5999**

STATE OF TEXAS

TRAVIS COUNTY

THIS CONTRACT is entered into between the Department of Public Safety (DPS) and the Local Governmental Entity listed in Section I (Contracting Parties) under the authority of the Texas Government Code Chapter 791 (the Interlocal Cooperation Act) and in furtherance of the responsibilities of DPS as provided in Texas Government Code Chapter 411.

I. CONTRACTING PARTIES

Department of Public Safety

and

Local Governmental Entity: City of Overton, Texas

Complete Address: 1200 S. Commerce St. Overton, TX 75684  
Street Address City and State Zip Code

Email Address: cityadmin@ci.overton.tx.us

II. STATEMENT OF SERVICE

DPS will provide certain forms, manuals, gunshot residue kits, and other supplies for the Local Governmental Entity to use in the Breath Testing and Laboratory Alcohol and Drug Testing Program. The purpose and objective of this Contract is to facilitate the use of uniform and consistent procedures, paperwork, printed materials, and supplies.

III. BASIS FOR CALCULATING COSTS

Costs will be in accordance with the DPS General Stores' non-DPS users price sheet.

IV. PAYMENT FOR SUPPLIES

Local Governmental Entity must submit full payment to DPS at the time of order. Payment will be made from the Local Governmental Entity's current revenues.

V. TERM OF CONTRACT

This Contract is effective as of the date of the last party to sign the contract and ends on August 31, 2021.

THE UNDERSIGNED CONTRACTING PARTIES bind themselves to the faithful performances of this Contract and have full authority to enter into this Contract on behalf of the respective parties.

If the governing body of a party is required to approve this Contract, it will not become effective until approved by the governing body of that party. In that event, this Contract will be executed by the duly authorized official of the party as expressed in the approving resolution or order of the governing body of said party, a copy of which must be attached to this Contract.

City of Overton, Texas  
Name of Local Governmental Entity

DEPARTMENT OF PUBLIC SAFETY  
Name of Agency

By:   
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Mayor  
Title

\_\_\_\_\_  
Title

Date: 10/19/17

Date: \_\_\_\_\_

## ATTACHMENT B

### Res No. 2017-10-19B – Ratification of OMDD FY 2017-18 Adopted Budget

City of Overton, TX

Resolution No. 2017-10-19B  
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City of Overton, TX

Resolution No. 2017-10-19B  
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#### RESOLUTION NO: 2017-10-19B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS RATIFYING ADOPTION OF THE FISCAL YEAR 2017-2018 ANNUAL OPERATING BUDGETS BY THE OVERTON MUNICIPAL DEVELOPMENT DISTRICT (OMDD) ON OCTOBER 12, 2017.

WHEREAS, the OMDD met on October 12, 2017 to consider adoption of the Operating Budgets for FY 2017-18; and

WHEREAS, after consideration of the proposed budget the OMDD Board adopted the Operating Budget for FY 2017-18 by a vote of 4 – 0; Board Member Stone absent.

NOW, THEREFORE, BE IT RESOLVED THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT:

SECTION 1. That the City Council of the City of Overton ratifies and approves the FY 2017-18, Annual Operating Budget of the Overton Municipal Development District as adopted by them and as shown in Exhibit A of this Resolution that is attached hereto and becomes a part hereof for all purposes.

DULY APPROVED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS 19<sup>TH</sup> DAY OF OCTOBER, 2017.



CITY OF OVERTON, TEXAS

*C.R. Evans, Jr.*  
C.R. Evans, Jr., MAYOR

ATTEST:

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

Overton Municipal Development District

Adopted FY 2017-18 Budget

#### EXHIBIT A

#### OMDD Annual Operating and CIP Budget - Adopted 2017-18 As of October 31, 2017

| Revenue                                      | Adopted<br>2017-18 | Current Mo.<br>Oct. 2018 | Year-to-<br>date | Differ-<br>ence | % Re-<br>maining |
|--|--------------------|--------------------------|------------------|-----------------|------------------|
| <b>Taxes</b>                                 |                    |                          |                  |                 |                  |
| State Sales Tax                              | 82,950             | -                        | -                | 82,950          | 100%             |
| <b>SubTotal Taxes</b>                        | <b>82,950</b>      | -                        | -                | <b>82,950</b>   | <b>100%</b>      |
| <b>Other Revenue</b>                         |                    |                          |                  |                 |                  |
| Interest Income                              | 650                | -                        | -                | 650             | 100%             |
| <b>Total General Operating Revenue</b>       | <b>83,600</b>      | -                        | -                | <b>83,600</b>   | <b>100%</b>      |
| <b>Expenditures</b>                          |                    |                          |                  |                 |                  |
| Office Supplies                              | -                  | -                        | -                | -               | 0%               |
| Training                                     | -                  | -                        | -                | -               | 0%               |
| Legal & Audit                                | 1,500              | -                        | -                | 1,500           | 100%             |
| Contract Services                            | 12,000             | -                        | -                | 12,000          | 100%             |
| <b>Total General Op. Expenditures</b>        | <b>13,500</b>      | -                        | -                | <b>13,500</b>   | <b>100%</b>      |
| <b>Capital Improvement Projects- Support</b> |                    |                          |                  |                 |                  |
| Reserves- Fund Balance                       | 42,198             |                          |                  |                 |                  |
| Reimbursement from County                    | -                  |                          |                  |                 |                  |
| <b>Total</b>                                 | <b>42,198</b>      |                          |                  |                 |                  |
| <b>Grants in Aide - City of Overton</b>      |                    |                          |                  |                 |                  |
| CDBG Grant - Match                           | 50,000             | -                        | -                | 50,000          | 100%             |
| City park Improvements (carryover)           | 4,435              | -                        | -                | 4,435           | 100%             |
| Kennamer Sq. Conversion -City Park           | 27,512             | -                        | -                | 27,512          | 100%             |
| Drainage/ St. Improvement Warren St          | 22,000             | -                        | -                | 22,000          | 100%             |
| New Playground Equipment - Park              | 35,176             | -                        | -                | 35,176          | 100%             |
| Light up Overton                             | 3,863              | -                        | -                | 3,863           | 100%             |
| <b>Total Grants</b>                          | <b>142,986</b>     | -                        | -                | <b>142,986</b>  | <b>100%</b>      |



## ATTACHMENT C

### Res No. 2017-10-19C – Ratification of OEDC FY 2017-18 Adopted Budget

City of Overton, TX

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City of Overton, TX

Resolution No. 2017-10-19C  
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#### RESOLUTION NO: 2017-10-19C

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS RATIFYING ADOPTION OF THE 2017-18 ANNUAL OPERATING BUDGET BY THE OVERTON ECONOMIC DEVELOPMENT CORPORATION (OEDC) ON OCTOBER 10, 2017.

WHEREAS, the OEDC met on October 10, 2017 to consider adoption of the Operating Budget for FY 2017-18; and

WHEREAS, after consideration of the proposed budget the OEDC Board adopted of the Operating Budget for FY 2017-18 by a vote of 4 – 0; Board Member Laws absent;

NOW, THEREFORE, BE IT RESOLVED THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT:

SECTION 1. That the City Council of the City of Overton ratifies and approves the FY 2017-18 Fiscal Year Operating Budget of the Overton Economic Development Corporation as adopted by them and as shown in Exhibit A of this Resolution that is attached hereto and becomes a part hereof for all purposes.

DULY APPROVED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS 19<sup>TH</sup> DAY OF OCTOBER, 2017.



CITY OF OVERTON, TEXAS

*C.R. Evans, Jr.*  
C.R. Evans, Jr., MAYOR

ATTEST:

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

Overton Economic Development District

#### EXHIBIT A

Adopted FY 2016-17 Budget

#### OEDC Annual Operating Budget FY 2017-18 - Adopted

| General Operating Funds              |                 |               |                     |             |
|--------------------------------------|-----------------|---------------|---------------------|-------------|
| <u>Revenue</u>                       |                 |               |                     |             |
|                                      | Adopted FY 2018 | Current Month | Year-to-date        | % Remaining |
| Taxes - State Sales Taxes            | 97,938          | -             | -                   | 0%          |
| SubTotal Taxes                       | 97,938          | -             | -                   | 0%          |
| <u>Other Revenue</u>                 |                 |               |                     |             |
| Interest Income                      | 1,100           | -             | -                   | 0%          |
| <b>General Op. Revenue - Total</b>   | <b>99,038</b>   | <b>-</b>      | <b>-</b>            | <b>0%</b>   |
| <u>Expenditures</u>                  |                 |               |                     |             |
|                                      | Adopted FY 2018 | Current Month | Year-to-date (July) | % Remaining |
| Office Supplies and Services         | 150             | -             | -                   | 0%          |
| Insurance and Bonds                  | 350             | -             | -                   | 0%          |
| Legal & Audit                        | 1,500           | -             | -                   | 0%          |
| Contract Services (City)             | 12,000          | -             | -                   | 0%          |
| <b>General Op Expenditures Total</b> | <b>14,000</b>   | <b>-</b>      | <b>-</b>            | <b>0%</b>   |

Overton Economic Development District

Adopted FY 2016-17 Budget

#### OEDC CIP Budget FY 2018-19 - Adopted

| Capital Improvement Funds              |                |                            |                 |                |               |
|--|----------------|----------------------------|-----------------|----------------|---------------|
| Source of Funding                      | Authorized     | Expended through 9-30-2017 | Adopted FY 2018 | Project Total  | Balance       |
| <b>Total CIP Funding</b>               | <b>618,000</b> | <b>-</b>                   | <b>618,000</b>  | <b>618,000</b> | <b>-</b>      |
| <u>Expenditures</u>                    |                |                            |                 |                |               |
| # 3 Dam Improvements                   | 228,000        | 146,700                    | 57,680          | 204,380        | -             |
| # 4 Spillway & Overflow Channel        | 264,000        | 172,213                    | 67,712          | 239,925        | -             |
| Subtotal Dam and Spillway Improvements | 493,000        | 318,913                    | 125,392         | 444,305        | 48,695        |
| # 5 Improve to WWTP Contact Pond       | 125,000        | 82,088                     | 42,512          | 125,000        | -             |
| <b>Total CIP Expenditures</b>          | <b>618,000</b> | <b>401,001</b>             | <b>168,004</b>  | <b>569,305</b> | <b>48,695</b> |

## ATTACHMENT D

### Ord No. 2017-10-19A – Amend Chapter 35 & Appointment of Interim City Manger

City of Overton, Texas

Ordinance No. 2017-10-19A  
Page 1 of 4

City of Overton, Texas

Ordinance No. 2017-10-19A  
Page 2 of 4

#### ORDINANCE NO 2017-10-19A

**AN ORDINANCE OF THE CITY OF OVERTON AMENDING CHAPTER 35 DEFINING THE OFFICE OF CITY MANAGER; PROVIDING FOR THE TERM OF OFFICE; PRESCRIBING THE DUTIES PERTAINING TO THAT OFFICE; PROVIDING FOR AND CREATING THE POSITION OF INTERIM CITY MANAGER IN THE ABSENCE OR RESIGNATION OF A CITY MANAGER; APPOINTMENT OF AN INTERIM CITY MANAGER FOR THE CITY OF OVERTON AND PROVIDING FOR COMPENSATION OF SAID POSITION.**

**WHEREAS**, Charles Cunningham, City Manager of the City of Overton, Texas announced his resignation from the City of Overton, Texas on September 14, 2017; and

**WHEREAS**, the City of Overton, Texas is authorized by Section §22.071 of the Texas Local Government Code to establish municipal offices other than those identified in Subchapter C of Chapter 22 of the Texas Local Government Code; and

**WHEREAS**, the City of Overton Code of Ordinances does not currently have a provision for the duties of the Office of City Manager or the appointment of an Interim City Manager in the event the office of City Manager is vacant; and

**WHEREAS**, the City Council deems it is in the best interests of the City to formerly establish by Ordinance the duties of the City Manager and the office of "Interim City Manager" in the event the office of the City Manager is vacant; and

**WHEREAS**, the City Council has determined that it would promote the public welfare generally to appoint Police Chief Clyde Carter to serve as the Interim City Manager of Overton, Texas for a period of time as to be determined by City Council; and

**WHEREAS**, this Ordinance was duly passed at a meeting held in strict compliance with Chapter 551 of the Texas Government Code at which a quorum of the City Council was present and voting;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS.**

**SECTION 1.** That Title III, Administration, Chapter 35 City Officials and City Employees, Section §35.50 City Manager be amended to read as follows:

#### §35.50 Office Created; City Manager

The position of City Manager has been created by the voters of the City of Overton.

#### §35.51 Appointment

The City Council shall appoint and may remove the City Manager upon the affirmative vote of a majority of the entire Council, and shall supervise the City Manager by majority vote. The City Manager shall be chosen and compensated solely on the basis of his or her experience, education, training, and ability and performance and need not when appointed be a resident of the City. The City Manager must be bonded at the City expense as determined by the Council. No member of the Council shall, during the term of office to which elected or for one (1) year thereafter, be appointed. The terms and conditions of the City Manager's employment may be governed by contract agreed upon and approved by the City Council.

#### §35.52 Duties and Responsibilities

That the duties and responsibilities of the City Manager shall be in accordance with the duties of the City Manager as set forth in Section §25.029 of the Texas Local Government Code and set forth in this Ordinance. The City Manager shall act as the chief executive and administrative officer for the City and shall be responsible to the Council for the proper administration of all the affairs and business of the City. The City Manager shall be required to:

- (a) Enforce all State Laws and City Ordinances;
- (b) Appoint, supervise, suspend and remove officers and employees of the City, except those appointed by the Council or as otherwise specifically provided by State Law;
- (c) Suspend any department head or municipal officer, until such time as the City Council can act on his recommendation upon suspension or dismissal in accordance with Section §22.077 of the Texas Local Government Code;
- (d) After consultation with the department head involved, to fill budgeted positions on the City's staff and make recommendations to the Mayor and City Council for the elimination of budgeted positions;
- (e) After consultation with the department head involved, shall have the authority to remove all subordinate employees;
- (f) Attend all council meetings except when excused;

City of Overton, Texas

Ordinance No. 2017-10-19A  
Page 3 of 4

- (g) Prepare and submit the proposed annual budget, and be responsible for the administration of the adopted budget;
- (h) Keep the Council advised of the financial condition and needs of the City and make appropriate recommendations;
- (i) Prepare and submit to the Council at the end of each fiscal year a complete report of the finances and administrative activities of the City for such year;
- (j) Make such other reports as the Council may require concerning the operations of the City;
- (k) Meet, discuss and confer with and advise the Mayor and/or members of the Council regarding City business;
- (l) Serve as the Executive Director of the Overton Economic Development Corporation;
- (m) Serve as the Executive Director of the Overton Municipal Development District;
- (n) Perform other duties as may be prescribed by ordinance, resolution or at the direction of the City Council.
- (o) To serve as first alternate to the City Secretary for attesting to and countersigning of the Mayor's or Mayor Pro Tem's signature on all official City documents.

**§ 35.53 Interim City Manager**

In the event the City Manager resigns, is terminated or if the office of City Manager is vacant, the Council shall designate an interim City Manager. The Council may designate a person to perform the duties of the City Manager during his /her extended absence or disability.

**SECTION 2.** That City Council of the City of Overton hereby appoints Police Chief Clyde Carter as the Interim City Manager of the City of Overton, Texas with all the responsibilities and duties as prescribed in Section §25.029 of the Texas Local Government Code and in Section 1 of this ordinance.

**SECTION 3.** That the terms of compensation for Police Chief Clyde Carter for the position of Interim City Manager shall be as follows: current annual salary of Police Chief of \$52,416.00; longevity and insurance benefits as currently provided to all City employees, a

City of Overton, Texas

Ordinance No. 2017-10-19A  
Page 4 of 4

phone allowance, plus, a bi-weekly stipend of 25% of current annual salary (calculated as \$504.00) for as long as he performs the duties of Interim City Manager.

DULY PASSED AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 19<sup>th</sup> DAY OF OCTOBER, 2017 BY A VOTE OF 4 AYES 0 NAYS AND 0 ABSTENSIONS.

CITY OF OVERTON, TEXAS



*C.R. Evans Jr.*  
C.R. Evans Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

# ATTACHMENT E Res No. 2017-10-19D – Deleting & Adding names to City’s Bank Accounts at TB&T

City of Overton, TX

Resolution No. 2017-10-19D  
Page 1 of 2

## RESOLUTION NO. 2017-10-19D

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS PROVIDING FOR AUTHORIZED SIGNATURES ON THE CITY OF OVERTON BANK ACCOUNTS AND INVESTMENT ACCOUNTS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council is the ultimate repository of authority for the City, and WHEREAS, the City Council deems it both necessary and desirable to designate certain individuals as the authorized signatories on City Bank Accounts and Investment Accounts.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS:

### SECTION 1. Signatures.

That the below individuals are allowed to sign on all city banking accounts and investment accounts.

- C. R. Evans, Jr., Mayor
- Philip Cox, Mayor Pro Tem
- Clyde Carter, Interim City Manager
- Wendy Bates, City Comptroller
- Rachél Gafford, City Secretary

### SECTION 2. Rescinding Prior Directives.

That all prior directives given by the City Council or its authorized representatives to any individuals named as authorized signatories on the City of Overton Bank and Investment Accounts are hereby rescinded and replaced with the above-cited list of individuals.

### SECTION 3. Checks Requiring Two Signatures.

That all checks issued out of the City Bank Accounts must contain two (2) signatures to execute a check, one of which must be the City Manager or Mayor.

### SECTION 4. Effective Date.

This Resolution shall be in full force and effect from and after the date of October 19, 2017 and it is accordingly so resolved.

City of Overton, TX

Resolution No. 2017-10-19D  
Page 2 of 2

DULY PASSED AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 19<sup>th</sup> DAY OF OCTOBER, 2017.



CITY OF OVERTON

*C. R. Evans, Jr.*  
C. R. Evans, Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

*Rachél Gafford*  
Rachél Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY



## ATTACHMENT F

### Res No. 2017-10-19E – Adding & Deleting City issued Credit Cards to City Staff

City of Overton, TX

Resolution No. 2016-10-19E  
Page 1 of 3**RESOLUTION NO: 2017-10-19E**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS AUTHORIZING THE ISSUANCE AND USE OF CITY CREDIT CARDS FOR THE DAY TO DAY OPERATIONS OF THE CITY OF OVERTON BY THE CITY MANAGER, CITY SECRETARY, CITY COMPTROLLER, CHIEF OF POLICE; CODE ENFORCEMENT / PUBLIC RELATIONS OFFICER; UTILITIES SUPERINTENDENT AND CHIEF OF THE VOLUNTEER FIRE DEPARTMENT; SETTING A MAXIMUM CREDIT LIMIT NOT TO EXCEED TWO THOUSAND FIVE HUNDRED (\$2,500.00) DOLLARS PER MONTH PER CARD; AND ESTABLISHING SPECIFIC ITEMS AUTHORIZED TO BE PURCHASE WITH THE USE OF THESE CREDIT CARDS.**

**WHEREAS**, the City of Overton, Texas is a Texas Municipal entity and a General Law Type A entity acting by and through its City Council and Mayor having 1200 S. Commerce Street as its legal mailing and legal physical address; and

**WHEREAS**, the City of Overton, Texas engages in governmental activities, including providing services to the general population at large which include: Water, Sewer, Trash, Municipal Community Center, Parks & Recreation Municipal Cemetery, Police, Fire which require acquisitions and expenditures to operate its City departments; and

**WHEREAS**, the City of Overton, Texas in order to facilitate the operations of the City departments and to likewise facilitate the duties of its department heads desires to obtain a Visa Credit Card and a line of credit and credit limit not to exceed the sum and amount of Two Thousand Five Hundred (\$2,500.00) Dollars per month through the issue of Texas Bank and Trust, at its Overton Banking Center in Overton, Texas, for the use exclusive and only of the City of Overton; and

**WHEREAS**, City Council does hereby approve the issuance of a Credit Card to the City of Overton for the use by the City Manager, City Secretary, City Comptroller, Chief of Police,

City of Overton, TX

Resolution No. 2016-10-19E  
Page 2 of 3

Code Enforcement / Public Relations Officer; Utilities Superintendent and Chief of Volunteer Fire Department; and

**WHEREAS**, the City Credit Cards used for purchases on behalf of the City of Overton shall be supervised and handled by the City Manager or City Manager Designee; and

**WHEREAS**, the City Credit Cards shall be limited to a maximum credit limit not to exceed Two Thousand Five Hundred (\$2,500.00) Dollars; and

**WHEREAS**, payments for credit card usage bill to be based on supporting documents (not statements) such as paid bills or receipts; and

**WHEREAS**, if an annual fee is assessed by the Credit Card Company it shall be paid by the City of Overton; and

**WHEREAS**, the purposes for which the City credit card may be used are:

- A. Purchase of gasoline, oil, tires, vehicle repairs and maintenance for municipal vehicles and equipment; and
- B. Registration fees and hotel fees associated with municipal training classes and municipal travel; and
- C. Purchase of supplies for the use in the operation of the City of Overton; and
- D. General municipal supplies ordered online where a City business account cannot be established.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT:**

**SECTION 1:** The City Council hereby empowers the Mayor and the City Secretary of the City of Overton, Texas to make and execute all forms, applications, papers and documents necessary and requisite with Texas Bank & Trust to have issued to the City of Overton, Visa Business credit cards having a line of credit and credit limit not to exceed the sum of Two Thousand Five Hundred (\$2,500.00) Dollars on each card for exclusive use by the City Manager, City Secretary, City Comptroller, Chief of Police, Utilities Superintendent and Chief of Volunteer Fire Department for authorized activities and budgeted expenditures of the City of Overton, Texas.

City of Overton, TX

Resolution No. 2016-10-19E  
Page 3 of 3

DULY APPROVED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
OVERTON, TEXAS ON THIS 19<sup>th</sup> DAY OF OCTOBER, 2017.



CITY OF OVERTON

  
C.R. Evans Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

  
Rachel Gafford, CITY SECRETARY

  
Blake Thompson, CITY ATTORNEY

**ATTACHMENT G**  
**Ord No. 2017-10-19B – Chapter 79 – Discharge of Firearms Ordinance**

City of Overton, Texas

Ordinance No. 2017-10-19B  
 Page 1 of 5

City of Overton, Texas

Ordinance No. 2017-10-19B  
 Page 2 of 5

**ORDINANCE NO. 2017-10-19B**

**Chapter 79 Discharge of Fire Arms**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, AMENDING TITLE VII GENERAL REGULATIONS BY THE ADDITION OF CHAPTER 79 ENTITLED “DISCHARGE OF FIREARMS” TO THE CITY OF OVERTON CODE OF ORDINANCES, DEFINING TERMS, PROHIBITING THE DISCHARGE OF FIREARMS AND AIR-GUNS WITHIN THE CITY, PROVIDING FOR EXCEPTIONS, AND PROVIDING A PENALTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; DECLARING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT.**

- 79.01 Purpose.
- 79.02 Definitions.
- 79.03 Intentional discharge prohibited.
- 79.04 Hunting prohibited.
- 79.05 Use of firearms, air-guns or tasers.
- 79.06 Discharge of firearms and air-guns prohibited; exceptions.
- 79.07 Discharge of firearms authorized on certain property.
- 79.08 Penalty.

WHEREAS, the City Council of the City of Overton had previously adopted the Ordinance No. 12-01-46, which was amended by Ordinance No 04-01-56; and which was then amended by Ordinance No. 11-01-64, which had prohibited the discharging of firearms or air-guns within the City of Overton; and

**§79.01. Purpose.**

This chapter is adopted so that the City may promote the public health, safety, morals and general welfare within the City through the regulation of the discharge of firearms and air-guns. The City seeks to prevent bodily injury, death, and property damage within the City limits by restricting the discharge of such devices as provided herein,

WHEREAS, the City of Overton’s “Discharge of a Firearm” Ordinance was inadvertently repealed when the current Code of Ordinances for the City of Overton was adopted and then ratified by Ordinance No. 2014-07-29A; and

**§79.02. Definitions.**

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

WHEREAS, the City Council desires to adopt an Ordinance that would prohibit the discharge of firearms and air-guns within the City limits of Overton;

- (a) *Air-Gun* means a device designed, made, or adapted to expel a projectile through a barrel by using the energy or force generated by the release of air or compressed gases. The term “air-gun” includes but is not limited to BB guns, pellet guns, air pistols, paintball guns and air-rifles.
- (b) *Firearm* means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. The term “firearm” includes but is not limited to revolvers, pistols, handguns, rifles, shotguns and tasers.
- (c) *Hunt* means to seek or pursue with intent to take or kill and includes take, kill and any attempt to take or kill.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, THAT:**

**§79.03. Intentional discharge prohibited.**

It shall be unlawful to intentionally discharge a firearm within the corporate city limits unless allowed under Sections §79.06.

**SECTION 1.** That Title VII “General Regulations” of the Code of Ordinances of the City of Overton Texas is amended by the addition of Chapter 79 “Discharge of Firearms”, which shall read as follows:

City of Overton, Texas

Ordinance No. 2017-10-19B  
Page 3 of 5**§79.04.** Hunting prohibited.

It shall be unlawful and a crime to intentionally injure, kill or hunt any wild game within the City.

**§79.05.** Use of firearms, air-guns or tasers.

- (a) It shall be unlawful for any person to fire, shoot, explode, or cause to be fired, shot, or exploded any firearm, rifle, shotgun, pistol, revolver, air-rifle, air-pistol or other device or instrumentality ordinarily known as firearms and capable of propelling bullets, shot or other solid or compact substances, whether propelled by powder, fire, compressed air or other force or by combination of such forces, within the corporate limits of the city.
- (b) For purposes of this section, a "taser" type of weapon is considered a firearm.

**§79.06.** Discharge of firearms and air-guns prohibited; exceptions.

## (a) This section shall not apply to:

- (1) The person discharged a firearm or air-gun in the lawful defense or protection of a person or property in accordance with state law;
- (2) Acts of defense of persons and property on premises under one's control as are lawful under the Penal Code of the state;
- (3) Certified state peace officers in the performance of their official duties;
- (4) Pistol matches in a fully enclosed pistol range which received advanced specific approval from City Council;
- (5) Any sporting event where starter guns are used;
- (6) The person was a duly appointed animal control officer in the course and scope of his or her official duties and was euthanizing a sick or injured animal or eradicating a predatory animal;
- (7) The person eradicated a predatory animal on his or her own property or with the written permission of the owner of the property;

City of Overton, Texas

Ordinance No. 2017-10-19B  
Page 4 of 5

- (8) The person used blank cartridges for a theatrical production, and event sponsored by a military organization, a funeral with military honors, an athletic event, or other ceremonial or commemorative events, provided that the discharge is performed safely and directed away from persons, animals, or structures so as to prevent bodily injury and property damage;
- (9) The person discharged an air-gun on his or her own property, provided such device is not fired into or onto another person's property without the other owners' written consent;
- (10) The person was at a shooting range operated by the United States Government, State of Texas, or political subdivision of the state, or which is privately operated as authorized or permitted by the City;
- (11) The person was a gunsmith and discharged the firearm at his or her place of business which was authorized or permitted by the City and the discharge was for test purposes;
- (12) The person was participating in an amusement arcade or paintball amusement facility authorized or permitted by the City; or
- (13) The person was using any mechanism designed to propel nails, bolts, screws, rivets, or other fasteners, so long as such mechanism was being used for its intended purpose.

**§79.07.** Penalty.

A person violating any provision of this chapter, shall, upon conviction, be fined an amount not to exceed \$500.00. Each day that a provision of this chapter is violated shall constitute a separate offense. An offense under this chapter is a misdemeanor.

**SECTION 2.** The City Secretary is authorized and directed to update and amend the City's Code of Ordinances to reflect the adopted amendments and to correct typographical errors and to index, format, number and letter paragraphs to the existing Code as appropriate.

**SECTION 3.** The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clauses of this Ordinance as an alternative method of publication provided by law.

**SECTION 4.** The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance, are hereby expressly repealed to the extent of any such inconsistency or conflict.

City of Overton, Texas

Ordinance No. 2017-10-19B  
Page 5 of 5

**SECTION 5.** If any section, provision, subsection, paragraph, sentence, clause, phrase, or word in this ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Overton, Texas, hereby declares it would have enacted such remaining portions, despite such invalidity.

**SECTION 6.** That the meeting at which this Ordinance was enacted was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

**SECTION 7.** This Ordinance shall be in full force and effect from and after October 19, 2017.

DULY PASSED AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 19<sup>th</sup> DAY OF OCTOBER, 2017 BY A VOTE OF 4 AYES 0 NAYS AND 0 ABSTENSIONS.

CITY OF OVERTON, TEXAS



*C. R. Evans Jr.*  
C. R. Evans Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

**ATTACHMENT H**  
**Ord No. 2017-10-19C – ROW Management Ordinance**

City of Overton, Texas

Ordinance No. 2017-10-19C  
Page 1 of 15

City of Overton, Texas

Ordinance No. 2017-10-19C  
Page 2 of 15

**ORDINANCE NO 2017-10-19C**

**A PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS; REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SEVERABILITY CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF OCTOBER 19, 2017.**

WHEREAS, the City of Overton, 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, Chapter 284 of the Texas Local Government Code ("the Code") allows certain wireless network providers to install in the City's 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 has enacted a *Design Manual for the Installation of Network Nodes and Node Support Poles* ("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 regulate the installation of Network Nodes and Network Support Poles pursuant to Chapter 284 of the Code in a way that is fair, reasonable and nondiscriminatory.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF OVERTON, TEXAS THAT:**

**SECTION 1. Findings of Fact**

The forgoing recitals are incorporated into this Right-of-Way Management Ordinance as findings of fact.

**SECTION 2. Use of Public Rights-Of-Way**

**§ 1.01 PURPOSE.**

The purpose of this chapter is to:

- A. Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy and maintenance of its public rights-of-way by wireless network providers;
- B. Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and
- C. Assist the City in protecting the public health, safety, and welfare.

**D. General Provisions:**

**1. As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**1.1** A Network Provider shall maintain accurate maps and other appropriate records of its Network Node Facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

**2. Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**2.1** A Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

**3. DRUG POLICY.** Drug policy of Network provider's personnel, and contractors in the public rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**3.1** It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

**4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.** The City Council has currently appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under the law.

**5. OWNERSHIP.** Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable codes and ordinances, except to the extent not consistent with Chapter 284.

**5.1** No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed

by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

**6. Tree Maintenance.** Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**6.1** A Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the City Manager. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**7. Signage.** Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**7.1** Network Provider shall post its name, location, identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility 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 Manager.

**7.2** Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

**8. Graffiti Abatement.** Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**8.1** As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

**9. Restoration.**

**9.1** A Network Provider shall restore and repair the public rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**9.2** A Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network 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 Network Provider was granted a Permit for the applicable

City of Overton, Texas

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by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

**6. Tree Maintenance.** Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**6.1** A Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the City Manager. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**7. Signage.** Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**7.1** Network Provider shall post its name, location, identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility 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 Manager.

**7.2** Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

**8. Graffiti Abatement.** Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**8.1** As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

**9. Restoration.**

**9.1** A Network Provider shall restore and repair the public rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**9.2** A Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network 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 Network Provider was granted a Permit for the applicable

City of Overton, Texas

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Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

**10. Network provider's responsibility.**

**10.1** A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**10.2** A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole, Transport Facility and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

**§ 1.02 GOVERNING LAW.**

This chapter 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.

**§ 1.03 DEFINITIONS.**

For the purpose of this chapter, the definitions found in the City *Design Manual for the Installation of Network Nodes and Node Support Poles* ("the Design Manual") are hereby incorporated into this chapter and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this chapter:

*Applicable codes* mean:

- A. the City uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- B. local amendments to those codes to the extent not inconsistent with Chapter 284.

*City* means the City of Overton, Texas or its lawful successor.

*City Council* means the municipal governing body of the City of Overton, Texas.

*Chapter 284* means Texas Local Government Code, Chapter 284.



*Code* means the Texas Local Government Code.

*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.

*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 according to nondiscriminatory City codes and ordinances.

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

*Federal Communications Commission* or *FCC* means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

*Highway right-of-way* means right-of-way adjacent to a state or federal highway.

*Historic district* means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

*Law* means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

*Local* means within the geographical boundaries of the City.

*Location* means the City-approved and lawfully permitted location for the Network Node.

*Mayor* means the mayor of the City of Overton, Texas, or designee.

*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.

*Municipal park* means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity.

*Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

- A. includes:
  - (i) equipment associated with wireless communications;
  - (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
  - (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- B. does not include:
  - (i) an electric generator;
  - (ii) a pole; or

(iii) a macro tower

*Network provider* means:

- A. a wireless service provider; or
- B. a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
  - (i) Network Nodes; or
  - (ii) Node Support Poles or any other structure that supports or is capable of supporting a network node.

*Node support pole* means a pole installed by a network provider for the primary purpose of supporting a Network Node.

*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 municipality has police power authority.

*Pole* means a service pole, City-owned utility pole, node support pole, or utility pole.

*Private easement* means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

*Provider* has the same meaning as "Network Provider."

*Public right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- A. a private easement; or
- B. the airwaves above a public right-of-way with regard to wireless telecommunications.

*Service pole* means a pole, other than a City-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.

*Street* means only the paved portion of the 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 generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A "Street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

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

*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.

*User* means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

*Utility pole* means a pole that provides:

- A. electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- B. services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

*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.

*Wireless service provider* means a person that provides wireless service to the public.

*Wireless facilities* mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code, Chapter 284.

**§ 1.04 USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY.**

Pursuant to this chapter and subject to the Design Manual and the Code, a wireless network provider has the nonexclusive right to use and occupy the public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless facilities.

The terms of this chapter shall apply to all wireless network providers' facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later.

**§ 1.05 COMPLIANCE WITH DESIGN MANUAL AND APPLICABLE CODES.**

All wireless network providers shall comply with the terms of this right-of-way management ordinance, City applicable codes, and the terms and conditions of the City's Design Manual.

**§ 1.06 GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS.**

A network provider shall construct and maintain Network Nodes and Network Support Poles described in the Code in a manner that does not:

- A. Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- B. Obstruct the legal use of a public right-of-way by other utility providers;

- C. Violate nondiscriminatory applicable codes;
- D. Violate or conflict with the City's publicly disclosed public right-of-way design specifications; or
- E. Violate the federal Americans with Disabilities Act of 1990 (ADA).

**§ 1.07 PERMIT APPLICATIONS.**

- A. Except as otherwise provided in Chapter 284 of the Code, a network provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public right-of-way.
- B. As required by Chapter 284 of the Code, the City shall not require a network provider to perform services for the City for which the permit is sought.
- C. A network provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.
- D. The network provider shall provide the following information in its permit applications:
  - (1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's Design Manual and applicable codes;
  - (2) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this chapter;
  - (3) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the 60<sup>th</sup> day after the date of construction and final testing of each Network Node is completed.
  - (4) A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage.
- E. **Exception:** As provided in Section 284.157 of the Code, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:
  - (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

- (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way, or
- (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code;
- (4) Notwithstanding Subdivision (D) above, the network provider or its contractors shall notify the City at least 24 hours in advance of work described in this Subdivision (D).

**§ 1.08 INSTALLATION IN HISTORIC DISTRICTS OR DESIGN DISTRICTS**

A network provider must obtain advance written consent from the City Council before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Design Manual. The City has the authority to designate new historic districts and design districts at a future date.

**§ 1.09 INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS**

A network provider may not install a new Node Support Pole in a public right-of-way without the City Council's discretionary, nondiscriminatory and written consent if the public right-of-way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
  - i. Not more than 50 feet wide; and
  - ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (3) In addition to the above, a network provider installing a Network Node or Node Support Pole in a public right-of way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.
- (4) The network provider shall be further required to comply with guidelines set out in the City's Design Manual.

**§ 1.10 MUNICIPAL REVIEW PROCESS BY THE CITY.**

**A. Determination of Application Completeness:** The City shall determine whether the permit application is complete and notify the applicant of that determination:

- (1) *For Network Nodes and Node Support Poles:* no later than 30 days after the date the City receives the permit application.
- (2) *For a Transport Facility:* no later than 10 days after the date the City receives the permit application.

**B. Approval or Denial of Application:** The City shall approve or deny a completed application after the date it is submitted to the City:

- (1) *For Network Nodes:* No later than 60 days after the date the City receives the complete application.
- (2) *For Network Support Poles:* No later than 150 days after the date the City receives the complete application.
- (3) *For Transport Facilities:* No later than 21 days after the City receives the complete application.

**C. Basis for Denial of Application:** If an application is denied by the City, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.

**D. Rebuttal of Denied Application:** The applicant may cure the deficiencies identified in the denial application.

- (1) The applicant has 30 days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the City.
  - (2) The City shall approve or deny the revised completed application after a denial not later than the 90<sup>th</sup> day after the City receives the revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.
- E. Nondiscriminatory Review:** Each completed application shall be processed by the City on a nondiscriminatory basis.

**§ 1.11 TIME OF INSTALLATION.**

A network provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. The

City Manager may in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

**§ 1.12 APPLICABLE FEES AND RENTAL RATES TO THE CITY.**

A. As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.

**B. Network Nodes:**

- (1) **Application Fee:** The application fee shall be \$100.00 for each Network Node for up to but not more than 30 Network Nodes.
- (2) **Annual Public Right-of-Way Rate Fee:** The annual public right-of-way rate shall be \$250.00 per Network Node installed in the City public rights-of-way.
- (3) **Public Right-of-Way Rate Adjustment:** 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 60<sup>th</sup> day following the written notice.

**C. Node Support Poles:**

- (1) The application fee for each Network Support Pole shall be \$100.00.

**D. Transfer Facilities:**

- (1) The application fee for each Transfer Facility shall be \$100.00.
- (2) The annual Transfer Facility rental rate shall be \$28.00 monthly for each Network Node site located in a public right-of-way. However, 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.

**E. Micro Network Nodes:**

- (1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.

**F. Collocation of Network Nodes on Service Poles**

- (1) Subject to the City's Pole Service Agreement, the collocation of Network Nodes on City service poles shall be at a rate of \$20.00 per year per service pole.

**G. City-Owned Municipal Utility Poles:**

- (1) A network provider shall pay an annual pole attachment rate for the collocation of a Network Node supported by or installed on a City-owned utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

H. The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of the public rights-of-way for use of the public rights-of-way.

**§ 1.13 INDEMNITY.**

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions ("claims") covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

**§ 1.14 EFFECT ON OTHER UTILITIES AND TELECOMMUNICATION PROVIDERS.**

Nothing in this Ordinance shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

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**SECTION 3. Repealing All Ordinances in Conflict**

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 4. Severability Clause**

This City Council of the City of Overton, Texas does hereby declare that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

**SECTION 5. Compliance with Open Meetings Act**

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 6. Effective Date.**

This Ordinance shall become effective on October 19, 2017.

DULY PASSED AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 19<sup>th</sup> DAY OF OCTOBER, 2017 BY A VOTE OF 4 AYES 0 NAYS AND 0 ABSTENSIONS.



CITY OF OVERTON, TEXAS

*C.R. Evans Jr.*  
C.R. Evans Jr., MAYOR

City of Overton, Texas

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ATTEST:

APPROVED AS TO FORM AND LEGALITY:

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

**ATTACHMENT I**  
**Ord No. 2017-10-19D –Design Manual & Pole Attachment Agreement**

City of Overton, Texas

Ordinance No. 2017-10-19D  
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**ORDINANCE NO 2017-10-19D**

**AN ORDINANCE BY THE CITY OF OVERTON, TEXAS, APPROVING A DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES; AND APPROVING A POLE ATTACHMENT AGREEMENT REGULATING THE INSTALLATION OF NETWORK NODES ON CITY SERVICE POLES AND UTILITY POLES; DECLARING GOVERNING LAW; PROVIDING REPEALING AND SEVERABILITY CLAUSES; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF OCTOBER 19, 2017.**

WHEREAS, the City of Overton, 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, 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 *Design Manual by the City of Overton, Texas for the Installation of Network Nodes and Node Support Poles* ("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

City of Overton, Texas

Ordinance No. 2017-10-19D  
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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 FOR THE CITY OF OVERTON, TEXAS THAT:

**SECTION 1. FINDINGS OF FACT**

The forgoing recitals are incorporated into this Ordinance as true and correct finding of fact.

**SECTION 2. APPROVING DESIGN MANUAL**

The City Council hereby approves the *Design Manual by the City of Overton, Texas for the Installation of Network Nodes and Node Support Poles*, which is attached here as Exhibit "A."

**SECTION 3. APPROVING POLE ATTACHMENT AGREEMENT**

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

**SECTION 4. 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 5. REPEALING ALL ORDINANCES IN CONFLICT**

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

City of Overton, Texas

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**SECTION 6. SEVERABILITY CLAUSE**

This City Council of the City of Overton, Texas does hereby declare that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

**SECTION 7. COMPLIANCE WITH OPEN MEETINGS ACT**

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 8. EFFECTIVE DATE**

This Ordinance shall become effective on October 19, 2017.

DULY PASSED AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 19<sup>th</sup> DAY OF OCTOBER, 2017 BY A VOTE OF 4 AYES 0 NAYS AND 0 ABSTENSIONS.



ATTEST:

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

CITY OF OVERTON, TEXAS

*C.R. Evans Jr.*  
C.R. Evans Jr., MAYOR

APPROVED AS TO FORM AND LEGALITY:

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

# ATTACHMENT A

## Design Manual by the City of Overton, Texas

*for the  
Installation of Network Nodes and Node Support Poles  
pursuant to Tex. Loc. Gov. Code, Chapter 284.*

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**SECTION 1. PURPOSE AND APPLICABILITY.**

The City of Overton, 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.

*Purpose:* Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as "Micro Network Nodes", "Network Nodes", and "Node Support Poles".

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301<sup>1</sup>, the City enacts these Design Guidelines 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.

*Applicability:* This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any siting's, 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.

*City Rights-of-Way Management Ordinance:* A Network Provider shall comply with the City's Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

**SECTION 2. DEFINITIONS.**

The definitions as used in Texas Local Government Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.<sup>2</sup>

*Abandon* and its derivatives means the facilities installed in the 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, is still in active use.



*Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

*Applicable codes* mean:

- (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

*City* means the City of Overton, Texas or its lawful successor.

*City Council* means the municipal governing body of the City of Overton, Texas.

*City Manager* means the City Manager for the City of Overton, Texas, or designee.

*Chapter 284* means Tex. Loc. Gov. Code, Chapter 284.

*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.

*Concealment or Camouflaged* means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

*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 according to nondiscriminatory municipal codes.

*Design District* means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

*Disaster emergency or disaster or emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

*Distributed Antenna System or DAS* shall be included as a type of "Network Node."

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

*Federal Communications Commission or FCC* means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

*Highway right-of-way* means right-of-way adjacent to a state or federal highway.

*Historic district* means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

*Law* means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

*Local* means within the geographical boundaries of the City.

*Location* means the City approved and lawfully permitted location for the Network Node.

*Macro tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

*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.

*Municipal park* means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

*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.

*MUTCD* means Manual of Uniform Traffic Control Devices.

*Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

- (A) includes:
  - (i) equipment associated with wireless communications;
  - (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
  - (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (B) does not include:
  - (i) an electric generator;
  - (ii) a pole; or
  - (iii) a macro tower

*Network provider* means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider.

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of supporting a network node.

*Node support pole* means a pole installed by a network provider for the primary purpose of supporting a network node.

*Permit* means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

*Pole* means a service pole, municipally owned utility pole, node support pole, or utility pole.

*Private easement* means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

*Provider* has the same meaning as "Network Provider."

*Public right-of-way* 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.

*Public right-of-way management ordinance* means an ordinance that complies with Chapter 284, Subchapter C.

*SCADA or Supervisory Control and Data Acquisition systems* means a category of software application programs and hardware used for process control and gathering of data in real time from remote locations in order to monitor equipment and conditions of the City public water and wastewater utility facilities. These systems may utilize both cable and wireless communications.

*Service pole* means a pole, other than a municipally owned utility pole, owned or operated by a municipality 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.

*Small cell* shall be included as a type of "Network Node."

*Street* means only the paved portion of the 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 generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-

way may include sidewalks and utility easements, a "Street" does not. A "Street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

*SWPPP* shall mean Storm Water Pollution Prevention Plan.

*TAS* means Texas Accessibility Standards.

*Traffic signal* means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

*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.

*Underground requirement area* shall mean an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to 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.

*User* means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

*Utility pole* means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

*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.

*Wireless service provider* means a person that provides wireless service to the public.

*Wireless facilities* mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code Chapter 284.

**SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

**A. Prohibited or Restricted Areas for Certain Wireless Facilities, except with Separate City Agreement or Subject to Concealment Conditions.**

1. *Municipal Parks and Residential Areas.* In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal Park or is adjacent to a street or thoroughfare that is:

- a. not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and
- b. adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

1.2 Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

**2. Historic District and Design Districts.** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or concealment measures for the Network Nodes or Node Support Poles. Therefore, 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.

2.2. The City request that a Network Provider explore 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.

2.3. A Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

**3. Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

**4. Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

**B. Least preferable locations.**

**1. Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a Municipal Park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

**2. Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

**C. Most preferable locations**

**1. Industrial areas** if not adjacent to a Municipal Park, Residential Area, Historic District or Design District.

**2. Highway Rights-of-Way areas** if not adjacent to a Municipal Park, Residential Area, Historic District or Design District.

**3. Retail and Commercial areas** if not adjacent to a Municipal Park, Residential Area, Historic District or Design District.

**D. Designated Areas.**

**1.** The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

**2.** The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

3. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

**E. Exceptions**

The City by its discretionary consent and agreement may grant exceptions to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

**F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.**

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

**3. Municipal Service Poles:**

- a. *Non-decorative street lights* with a height of more than 20 feet.
- b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).
- c. *Street signage shall be a low priority use for attachment of a Network Node.*
- d. *Other municipal service pole use is discouraged.*

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

**SECTION 4. GUIDELINES ON PLACEMENT.**

**A. Generally.**

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

- 1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- 2. obstruct the legal use of a public right-of-way by other utility providers;
- 3. violate nondiscriminatory applicable codes;
- 4. violate or conflict with the City's publicly disclosed public right-of-way management ordinance or this Design Manual.

5. violate the Federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

**B. General Requirements and Information:**

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.

2. *State and Federal Rights-Of-Way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication or SCADA Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. 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.

4. *Improperly Located Network Node Facilities, Node Support Poles and related ground equipment:*

a. *Improperly Located Network Node Facilities, Node Support Poles and related ground equipment* shall not impede pedestrian or vehicular traffic in the Right-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 Manager 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 Network Provider shall promptly remove the Network Node Facilities, Node Support Poles or ground equipment.

b. *Notice to Remove unauthorized facilities and relocate and penalty:* After 30 days' notice to remove Network Node Facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500.00 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node Facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-Way Management Ordinance, and

other applicable ordinances concerning improperly located facilities in the rights-of-way.

**B. Underground Requirement Areas.**

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Dig Tess must be called so that the area can be flagged for underground utilities.

**C. Network Node Facilities Placement:**

1. *Right-of-Way:* Network Node Facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, 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.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limits on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

**D. New Node Support Poles.**

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

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2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- b. 55 feet above ground level.

**E. Ground Equipment.**

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

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

**3. Minimize Ground equipment density:**

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City Manager, or designee, may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

**4. Water, Sewer and Storm Drainage Lines:**

Special precautions must be taken where underground fiber optic cable is installed in public street rights-of-way commonly used for utility corridors.

- a. Underground utilities and service connections must be identified prior to excavation. "Dig Alert," "One Call," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.
- b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.
- c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 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

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be installed under the existing utility. If the minimum 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.

- d. *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 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.
- e. *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 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.
- f. *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 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

**5. Blocking streets, roads, alleys or lanes:**

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

**F. Municipal Service Poles:**

- 1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).
- 2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.
- 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.
- 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 an 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:

- a. Be encased in a separate conduit than the traffic light electronics;
- b. Have a separate electric power connection than the traffic signal structure; and
- c. Have a separate access point than the traffic signal structure; and

**5. Installations on Street signage:** Installations on all street 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 electrics shall:

- a. Be encased in a separate conduit than any City signage electronics;
- b. Have a separate electric power connection than the signage structure;
- c. Have a separate access point than the signage structure; and

**6. Restoration of City facilities and private property:** The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.

**SECTION 5. GENERAL AESTHETIC REQUIREMENTS**

**A. Concealment.**

- 1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.
- 2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.
- 3. The Network Node facilities shall be concealed or enclosed as much as reasonably 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 visually minimized to the extent possible in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.
- 4. The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

**B. New Node Support Pole Spacing.**

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

**C. Minimize Ground Equipment Concentration.**

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1), to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

**D. Allowed Colors.**

1. Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

**SECTION 6. ELECTRICAL SUPPLY**

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node Facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, 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 Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Public Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

**SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.**

A. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

B. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

**SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, RELOCATION, REPLACEMENT, MAINTENANCE AND REPAIR**

**A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.**

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node Facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. If the Network Provider removes or relocates a Micro Network Node, Network Node Facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node Facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node Facilities, Node Support Poles or related ground equipment that have been removed.

**B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.**

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the City managing the public right-of-way

3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

4. Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager 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 of a street or public rights-of-way to enhance the traveling public's use for travel and transportation.

5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network's Node, Node Support Pole or related ground

equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

6. Network Provider 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, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

**C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.**

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3. The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

4. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

**SECTION 9. INSTALLATION AND INSPECTIONS**

**A. INSTALLATION.**

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node Facilities, Node Support Poles and related ground equipment in a good and workmanlike manner in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node Facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider's work shall be subject to the

regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node Facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

**B. INSPECTIONS.**

1. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way which shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

**SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

1. Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment 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 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager in writing of such removal or Abandonment and shall file with the City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

**SECTION 11. GENERAL PROVISIONS.**

1. **As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.



1.1 A Network Provider shall maintain accurate maps and other appropriate records of its Network Node Facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

**2. Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2.1 A Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

**3. DRUG POLICY.** Drug policy of Network provider's personnel, and contractors in the public rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

**4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.** The City Council has currently appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under the law.

**5. OWNERSHIP.** Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable codes and ordinances, except to the extent not consistent with Chapter 284.

5.1 No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

**6. Tree Maintenance.** Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

6.1 A Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network

Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the City Manager. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**7. Signage.** Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

7.1 Network Provider shall post its name, location, identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility 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 Manager.

7.2 Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

**8. Graffiti Abatement.** Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

8.1 As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

#### **9. Restoration.**

9.1 A Network Provider shall restore and repair the public rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

9.2 A Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network 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 Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

#### **10. Network provider's responsibility.**

10.1 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents,

Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

10.2 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole, Transport Facility and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

**SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION**

12.1 Should the Network Provider desire to deviate from any of the standards set forth in the Design Manual, the Network Provider may request an Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption.

12.2 The process for an application, hearing and vote shall follow the process set out for a variance.

**SECTION 13-19 RESERVED**

**SECTION 20. DESIGN MANUAL - UPDATES**

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.

<sup>1</sup> Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all person's subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

<sup>2</sup> The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "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.

(4) "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 according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "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.

(10) "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.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
- (i) network nodes; or
  - (ii) node support poles or any other structure that supports or is capable of supporting a network node.
- (14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.
- (15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.
- (16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.
- (17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.
- (18) "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.
- (19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.
- (20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.
- (21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality 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.
- (22) "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.
- (23) "Utility pole" means a pole that provides:
- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
  - (B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.
- (24) "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.
- (25) "Wireless service provider" means a person that provides wireless service to the public.

ATTACHMENT B

TEXAS LOCAL GOVERNMENT CODE CHAPTER 284

POLE ATTACHMENT AGREEMENT

THE STATE OF TEXAS                     §  
COUNTY OF RUSK / SMITH           §

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\_\_\_\_, by and between the CITY OF OVERTON, TEXAS, hereinafter called "the City", and \_\_\_\_\_, hereinafter called "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 attach certain Network Nodes, as that term is defined in Section 284.002 of the 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 certain Network Nodes on such City poles, subject to the City's 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, BE IT MUTUALLY AGREED AS FOLLOWS:**

1. **Location of the City Poles.** The 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 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:

|  |                      |
|--|----------------------|
|  | City of Overton      |
|  | City Hall            |
|  | 1200 S. Commerce St. |
|  | Overton, Texas 75684 |

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 Overton, Rusk / Smith County, Texas.

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

**CITY OF OVERTON, TEXAS**

\_\_\_\_\_  
City Manager or City Manager Designee Dated: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Secretary

**NETWORK PROVIDER:**

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Title of Authorized Officer Dated: \_\_\_\_\_

ATTACHMENT C



**CITY OF  
OVERTON, TX**  
1200 S. Commerce St  
Overton, TX 75684  
PHONE: 903-834-3171  
FAX: 903-834-3174  
<http://www.overton.ci.tx.us>

|   |
|---|
| <b>WIRELESS NETWORK PERMIT APPLICATION</b><br><small>Non-Transferable</small> |
| DATE OF APPROVAL: _____   |
| PERMIT NUMBER: _____  |

**NOTICE:** AS AUTHORIZED BY CHAPTER 214 OF THE TEXAS LOCAL GOVERNMENT CODE, A NETWORK PROVIDER SHALL OBTAIN A PERMIT OR PERMITS FROM THE CITY TO INSTALL A NETWORK NODE, NODE SUPPORT POLE OR TRANSPORT FACILITY IN A CITY OF OVERTON PUBLIC RIGHT-OF-WAY

Owner: \_\_\_\_\_ | Owner Phone #:(\_\_\_\_\_) \_\_\_\_\_

Owner Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contractor: \_\_\_\_\_ Cont. Phone #:(\_\_\_\_\_) \_\_\_\_\_

Contractor Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ | State: \_\_\_\_\_ | Zip: \_\_\_\_\_

Job Site Addresses:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of work:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is any network node being installed in a City municipal park? \_\_\_\_\_  
Is any network node being installed in a residential area? \_\_\_\_\_

**The permit applicant must submit the following information with this application:**

1. Applicable construction and engineering drawings of the facilities to be installed.
2. Any additional information to confirm that the applicant will comply with the City's Design Manual and Right-of-Way Management Ordinance.
3. A certificate that the proposed Network Node(s) comply with applicable Federal Communications Commission regulations.
4. A certificate that the proposed Network Nodes will be placed into active commercial service not later than the 60<sup>th</sup> day after the date of construction and final testing of each Network Node.
5. A certificate of insurance confirming that the Owner and Contractor each have at least \$1,000,000.00 of general liability insurance coverage.

**FEEES FOR WIRELESS NETWORK FACILITIES PLACED IN CITY RIGHTS-OF-WAY:**

|          |   |
|----------|---|
| \$100.00 | Application Fee Per Network Node  |
| \$250.00 | Annual Public Right-of-Way Rate Per Network Node  |
| \$100.00 | Application Fee Per Node Support Pole   |
| \$100.00 | Application Fee Per Transfer Facility   |
| \$28.00  | Monthly Rental Rate Per Network Node for Each Transfer Facility                                   |
| \$20.00  | Annual Rental Rate for Collocation of Network Node Per Service Pole                               |
| Varies   | Annual Rental Rate for Collocation of Network Node Per Utility Pole (per foot basis calculations) |

**APPLICANT HEREBY ACKNOWLEDGES THAT IT HAS READ AND WILL COMPLY:**

1. WITH THE CITY DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES, AND
2. WITH THE CITY RIGHT-OF-WAY MANAGEMENT ORDINANCE.

I hereby certify that I have read and examined this application and know the same to be true & correct. All provisions of law and ordinances governing this type of work will be complied with whether or not specified herein. The granting of this permit does not presume to give authority to violate or cancel the provisions of any state law or local ordinance regulating the installation of wireless telecommunication network nodes, node support poles, and transfer facilities.

Name of Applicant: \_\_\_\_\_ Applicant Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**OFFICE USE ONLY**

Date Delivered: \_\_\_\_\_ Accepted By: \_\_\_\_\_

Application Fees for \_\_\_\_\_ Network Nodes: \$ \_\_\_\_\_

Application Fees for \_\_\_\_\_ Node Support Poles: \$ \_\_\_\_\_

Application Fees for \_\_\_\_\_ Transfer Facilities: \$ \_\_\_\_\_

Annual Rental Rate for \_\_\_\_\_ Network Nodes: \$ \_\_\_\_\_

Annual Rental Rate for \_\_\_\_\_ Transfer Facilities: \$ \_\_\_\_\_

Annual Rental Rate for Collocation of Network Nodes on \_\_\_\_\_ City Service Poles: \$ \_\_\_\_\_

Annual Rental Rate for Collocation of Network Nodes on \_\_\_\_\_ City Utility Poles: \$ \_\_\_\_\_

PERMIT FEES TOTAL: \$ \_\_\_\_\_

ANNUAL RATE TOTAL: \$ \_\_\_\_\_

### ATTACHMENT J Res No. 2017-10-19G – Official Newspaper Designation

City of Overton, TX

Resolution No. 2017-10-19G  
Page 1 of 2

#### RESOLUTION NO: 2017-10-19G

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS DESIGNATING THE HENDERSON DAILY NEWS AS THE OFFICIAL NEWSPAPER FOR THE CITY OF OVERTON, TEXAS AND THE TYLER MORNING TELEGRAPH AS THE OFFICIAL SUPPORT NEWSPAPER OF THE CITY OF OVERTON, TEXAS; PROVIDED FOR AN EFFECTIVE DATE HEREOF.**

WHEREAS, Section 52.004 (a) of the Local Government Code requires that each year (as soon as practicable after the beginning of each municipal year), the governing body of the municipality shall contract, as determined by Ordinance or Resolution, with a public newspaper of the municipality to be the municipality's official newspaper until another newspaper is selected; and

WHEREAS, City Council finds that *Henderson Daily News* is a paper of general circulation within the City of Overton; and

WHEREAS, the City Council finds that *Henderson Daily News*

1. devotes not less than 25% of its total column lineage to general interest items; and
2. is published at least once each week; and
3. is entered as 2<sup>nd</sup> class postal matter in the county where published; and
4. has been published regularly and continuously for at least 12 months before the governmental entity or representative publishes notice; and

WHEREAS, the City Council finds that *Henderson Daily News* is a publication that meets all of the criteria legally required of an officially designated newspaper for the City of Overton; and;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS:**

**SECTION 1.** The City Council of the City of Overton, Texas hereby designates the *Henderson Daily News* as the official newspaper of the City of Overton, Texas.

**SECTION 2.** In the event of a deadline, the notices may be published in the *Tyler Morning Telegraph* as the official support newspaper of the City of Overton, Texas.

City of Overton, TX

Resolution No. 2017-10-19G  
Page 2 of 2

**SECTION 3.** Until October 31, 2018, or until changed by resolution of the City Council, of the City of Overton shall continue to publish in *Henderson Daily News* each Ordinance or caption thereof, notice or other matter required to be published by law.

**SECTION 4.** Should any word, phrase, paragraph, section or portion of this resolution be held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining portions of the resolution shall not be affected thereby, and each such illegal, invalid or unenforceable word, phrase, paragraph, section or portion shall not affect the resolution as a whole.

**SECTION 5.** The Resolution shall become effective immediately upon its passage and execution.

DULY APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS 19<sup>TH</sup> DAY OF OCTOBER, 2017.

CITY OF OVERTON, TEXAS



*C.R. Evans Jr.*  
C.R. Evans Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY

*Rachel Gafford*  
Rachel Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

**ATTACHMENT K**  
**Financial summary report of AP Invoices (ACH and Check Payments)**

**City of Overton**  
**AP Invoices - ACH Payments**  
**As of 10/9/17**

| Vendor                      | Monthly Bill | Invoice Date | Amount Outstanding  | Current Charges (if different than outstanding) | Approx Months Per Bill | Notes  |
|-----------------------------|--------------|--------------|---------------------|---|------------------------|--|
| Republic                    | Y            | 8/31/17      | \$44,326.33         | \$14,781.15                                     | 3                      | Pd current charges of \$14,781.15 on 9/20 (already deducted from amount outstanding)   |
| Hudson Energy               | Y            | 9/13/17      | \$45,924.21         | \$14,742.28                                     | 3                      | Pd \$16,025.27 on 9/22 (already deducted from amount outstanding)  |
| Konica                      | Y            | 9/3/17       | \$270.12            |   | 1                      |  |
| Office Depot                | Y            | 9/8/17       | \$504.15            | \$30.27   | Varies                 |  |
| Consolidated Communications | Y            | 9/16/17      | \$51.22             |   | 1                      |  |
| Exxon                       |              | ?            | \$50.00             |   | ?                      | Told Pam we needed more info on this before paying (she originally was processing as AP check but paid electronically and don't know where invoice is) |
| Lease Direct                | Y            | ?            | \$141.58            |   | 1?                     | From bank statement  |
| Longview Computer Center    | Y            | 10/1/17      | \$1,294.00          |   | 1                      |  |
| Century Link                | Y            | 9/16/17      | \$158.49            | \$79.67   | 2                      |  |
| Century Link                | Y            | 9/16/17      | \$445.81            |   | 1                      |  |
| Century Link                | Y            | 9/16/17      | \$50.10             |   | 1                      |  |
| Century Link                | Y            | 9/16/17      | \$228.22            |   | 1                      |  |
| TML IEBP                    |              | 9/1/17       | \$11,566.49         |   | 1                      | September  |
| TML IEBP                    | Y            | 10/1/17      | \$12,371.82         |   | 1                      | October  |
| Verizon                     | Y            | 9/27/17      | \$787.10            | \$393.57  | 2                      | Received Disconnect Notice   |
| Visa (Texas Bank & Trust)   | Y            | 9/12/17      | \$1,791.29          |   | 1                      |  |
| TMRS                        | Y            | 9/30/17      | \$4,726.66          |   | 1                      | September  |
|                             |              | <b>Total</b> | <b>\$124,687.59</b> |   |                        |  |

**City of Overton  
AP Invoices - ACH Payments  
As of 10/9/17**

| <b>Vendor</b>              | <b>Monthly Bill</b> | <b>Invoice Date</b> | <b>Amount Outstanding</b> | <b>Current Charges (if different than outstanding)</b> | <b>Approx Months Per Bill</b> | <b>Notes</b> |
|----------------------------|---------------------|---------------------|---------------------------|--|-------------------------------|--------------|
| PR Taxes - Pay Date 10/6   |                     | 10/11/17            | \$6,993.83                |  |                               |              |
| Payroll - Final Check Pam  |                     | 10/11/17            | \$650.00                  | Estimated  |                               |              |
| PR Taxes - Final Check Pam |                     | 10/13/17            | \$120.00                  | Estimated  |                               |              |
| Payroll - Pay Date 10/20   |                     | 10/20/17            | \$24,700.00               | Estimated  |                               |              |
| PR Taxes - Pay Date 10/20  |                     | 10/24/17            | \$7,300.00                | Estimated  |                               |              |
|                            |                     |                     | <b>\$39,763.83</b>        |  |                               |              |
| Payroll - Pay Date 11/3    |                     | 11/3/17             | \$20,000.00               | Estimated  |                               |              |
| PR Taxes - Pay Date 11/3   |                     | 11/7/17             | \$6,800.00                | Estimated  |                               |              |
|                            |                     |                     | <b>\$26,800.00</b>        |  |                               |              |
| <b>Total</b>               |                     |                     | <b>\$191,251.42</b>       |  |                               |              |

\*Please note that items listed above are outstanding invoices/statements that I have found as of 10/9/17 (since the Finance Director was put on Administrative Leave), but there are additional invoices I have not had time to finish reviewing and additional invoices arriving daily.



**City of Overton**  
**AP Invoices - Check Payments**  
**As of 10/9/17**

| Vendor                          | Invoice Date | Amount Outstanding | Current Charges (if different than outstanding) | Approx Months Per Bill | Notes   |
|---------------------------------|--------------|--------------------|---|------------------------|---|
| Lowe's                          | 9/20/17      | \$146.04           |   | 1                      |   |
| Lonestar                        | B16388       | \$135.00           |   | 1                      |   |
| Lonestar                        | Statement    | \$1,387.14         |   | ?                      | Unpaid balance per August statement           |
| United Systems Technology Inc   | 8/31/16      | \$195.00           |   | N/A                    | Bldg Permits Go Live                          |
| United Systems Technology Inc   | 6/8/16       | \$315.00           |   | N/A                    | Bank Drafts License and Maintenance           |
| United Systems Technology Inc   | 9/6/16       | \$100.00           |   | N/A                    | Remote Update - Q4 2016                       |
| United Systems Technology Inc   | 3/31/17      | \$100.00           |   | N/A                    | Remote updates                                |
| United Systems Technology Inc   | 8/31/17      | \$6,890.95         |   | 12                     | FY18 license and support fees                 |
| Henderson Daily News            | 9/13/17      | \$63.00            |   | N/A                    |   |
| TML IRP                         | 10/1/17      | \$13,408.50        |   | 3                      | Quarterly Invoices                            |
| TxTag                           | 9/25/17      | \$28.04            | \$14.68   | 2                      | If for PD vehicles, may be able to get waived |
| All American Electric           | 8/23/17      | \$783.00           |   | N/A                    |   |
| Underground Utility             | 6/13/17      | \$225.00           |   | N/A                    | From statement - need invoice                 |
| Underground Utility             | 9/27/17      | \$331.05           |   | N/A                    |   |
| Jim's Feed                      | 8/31/17      | \$92.25            |   | 1                      |   |
| CivicPlus                       | 10/1/17      | \$480.65           |   | 3                      | Quarterly Invoices                            |
| Prothro Wilhelmi                | 8/31/17      | \$2,100.00         |   | N/A                    | FY14 audit                                    |
| AWWS                            | 9/6/17       | \$434.00           |   | 1                      |   |
| Rusk County Appraisal District  | 9/1/17       | \$2,442.75         |   | 3                      | Fourth quarter 2017                           |
| Smith County Appraisal District | 9/1/17       | \$161.50           |   | 3                      | Fourth quarter                                |
| CASCO Industries                | 4/18/16      | \$321.00           |   |                        | From statement - need invoice                 |

**City of Overton  
AP Invoices - Check Payments  
As of 10/9/17**

| Vendor                    | Invoice Date | Amount Outstanding | Current Charges (if different than outstanding) | Approx Months Per Bill | Notes   |
|---------------------------|--------------|--------------------|---|------------------------|---|
| CASCO Industries          | 5/31/16      | \$128.00           |   |                        | From statement - need invoice   |
| CASCO Industries          | 7/28/17      | \$3,800.00         |   | N/A                    |   |
| Sierra Supply & Packaging | 9/11/17      | \$65.18            |   | N/A                    |   |
| Sierra Supply & Packaging | 9/5/17       | \$493.47           |   | N/A                    |   |
| Overton VFD               | 9/1/17       | \$2,500.00         |   | N/A                    | Reimburse OFD for 1/2 cost to reffloor at fire station; per Jim can pay in December |
| Crimestar                 | 2/1/16       | \$3,500.00         |   | N/A                    | RMS enterprise license upgrade  |
| Crimestar                 | 9/12/16      | \$2,700.00         |   | 12                     | RMS/CAD/MDC annual support  |
| Perdue, Brandon, Fielder  | 9/21/17      | \$32.99            |   | 1                      |   |
|                           | <b>Total</b> | <b>\$43,359.51</b> |   |                        |   |

\*Please note that items listed above are outstanding invoices/statements that I have found as of 10/9/17 (since the Finance Director was put on Administrative Leave), but there are additional invoices I have not had time to finish reviewing and additional invoices arriving daily.