

## SECTION 12 - RULES AND DESIGN MANUAL FOR SMALL CELL NETWORK FACILITIES IN THE RIGHT-OF-WAY

### 12.1 - Purpose

This section 12 ("this Rule") is adopted to administer those parts of Article 2 of Chapter 14-11 (Use of Right-of-Way for Construction, Excavation, Facility Installation, or Temporary Use) of the Austin City Code exercising the City's authority to manage and regulate the private use of City public right-of-way by small cell wireless network providers as that use is granted by Chapter 284 of the Texas Local Government Code.

This Rule sets forth process, terms, and conditions for requesting and permitting the use of City public right-of-way and City-owned traffic signal poles in City public right-of-way by network providers for network nodes, node support poles, and transport facilities. The parts of this Rule related to attachments to traffic poles administers those parts of Chapter 15-7 (Use of City-Owned Utility Infrastructure) of the City Code governing attachments to traffic poles.

This Rule also sets forth design parameters, limits, and standards that include aesthetic and concealment requirements for network nodes, node support poles, and transport facilities intended to be placed in City right-of-way under Chapter 284 of the Texas Local Government Code whether a facility is subject to City permitting or exempt by state law.

Unless otherwise determined by the director in writing, the terms of this Rule and all design parameters, limits, or standards set out in this Rule for network nodes, node support poles, and transport facilities, comprise the City's design manual for the purposes of Section 284.108 of the Texas Local Government Code. Unless otherwise apparent by the context and common meaning of a term, the terms used in this Rule have the meanings attributed to them by Section 284.002 of the Texas Local Government Code as those terms may be construed and further described by applicable Austin City Code.

In addition to complying with City of Austin City Code, in particular Chapters 14-11 and 15-7, a network provider as that term is defined by Section 284.002 of the Texas Local Government Code, must comply with the provisions in this Rule.

As of September 1, 2017, the City will no longer issue or grant site licenses under the terms of a Master License Agreement for Wireless Facilities in the Right-of-Way Downtown Small Cell (the "Pilot Project MLA"), the terms of the Pilot Project MLA having been superseded by the enactment of Chapter 284 of the Texas Local Government Code and the adoption of this Rule. If by judicial order or ruling, the effect of Chapter 284 of the Texas Local Government Code is suspended or enjoined, in whole or in part, the director in the director's sole discretion and subject to applicable law, may resume processing and issuing permits and executing license agreements in accordance with the director's discretion and authority under Chapters 14-11 and 15-7 of the City Code.

### 12.2 - General Provisions: Network Nodes, Node Support Poles, and Transport Facilities Within Public Right-of-Way

#### 12.2.1 - Network Provider Responsibilities

- A. A network provider shall be responsible and liable for the acts, submissions and omissions of the network provider's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, authorized agents, authorized joint licensees, and subcontractors.
- B. A network provider shall provide and maintain current contact information for an authorized representative to participate in regularly scheduled Austin Utility Location and Coordination Committee (AULCC) meetings.

- C. A network provider must submit an application to place a network node in the public right-of-way. In addition to the right-of-way permit, a network provider must follow the application process to collocate on a pole or place a node support pole in the public right-of-way. The application to place a network node in a public right-of-way can be submitted at the same time and with an application to construct a network node support pole or collocate on a service pole. Application forms are available from the director.
- D. If the director determines that due to the absence or inaccuracy of essential information provided, a network provider has failed to submit an application in good faith, the submission is not an application and the director may reject the submission without an obligation to comment on completeness.
- E. A network provider shall not install a facility in public right-of-way without all applicable approvals, including, but not limited to: attachment agreements, node support pole permits, temporary use of right-of-way permits, excavation permits, electrical permits, etc.
- F. Accuracy and compliance of the plans is the responsibility of the network provider and the professional engineer of record. The network provider is responsible for bringing any installation into compliance with all applicable laws and regulations at any time.

#### 12.2.2 - Restrictions on Placement

- A. A network provider must obtain approval from the City before collocating network nodes or installing node support poles in an area zoned or otherwise designated as a historic district or a design district if the design district has decorative poles. Approval shall be obtained from the Planning and Zoning Department.
- B. Network nodes, node support poles, transport facilities, and related equipment and facilities may not be placed in a manner that in the director's opinion: obstructs, impedes, or hinders the usual pedestrian or vehicular travel; affects public safety; obstruct the legal use of right-of-way by public utilities; violates applicable law; violates or conflicts with public right-of-way design standards, specifications, or design district requirements; violates the federal Americans With Disabilities Act of 1990; or in any way creates a risk to public health, safety, or welfare. The network provider shall be responsible for correcting the noncompliant installation.
- C. Placement of network nodes, node support poles, and transport facilities must comply with undergrounding requirements that prohibit installing aboveground structures in a public right-of-way imposed by applicable ordinances, City Codes, zoning regulations, state law, public or private covenants or restrictions, or applicable criteria manuals, including this Rule, other sections of the Transportation Criteria Manual, and the Utilities Criteria Manual.

#### 12.2.3 - Size Limitations of Equipment

- A. Unless otherwise specified in this Rule, a network node installed on any pole within the public right-of-way must conform to the following:
  - 1. Each antenna that does not have exposed elements and is attached to an existing structure or pole:
    - a. Must be located inside an enclosure of not more than six cubic feet in volume;
    - b. May not exceed a height of three feet above the existing structure or pole; and
    - c. May not protrude from the outer circumference of the existing structure or pole by more than two feet;
  - 2. If an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
    - a. Must fit within an imaginary enclosure of not more than six cubic feet;
    - b. May not exceed a height of three feet above the existing structure or pole; and

- c. May not protrude from the outer circumference of the existing structure or pole by more than two feet;
  - 3. The cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
    - a. Be more than 28 cubic feet in volume; or
    - b. Protrude from the other circumference of the existing structure or pole by more than two feet;
  - 4. Ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
  - 5. Pole-mounted enclosures may not be taller than five feet.
- B. The following types of associated ancillary equipment are not included in the calculation of equipment volume under subsection A:
  - 1. Electric meters;
  - 2. Concealment elements;
  - 3. Telecommunications demarcation boxes;
  - 4. Grounding equipment;
  - 5. Power transfer switches;
  - 6. Cut-off switches; and
  - 7. Vertical cable runs for the connection of power and other services.
- C. Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- D. Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

#### 12.2.4 - No Overhead Lines

No network provider shall install overhead lines connecting to a network node collocated on a service pole or a node support pole, unless approved by the director for temporary maintenance or repair not to exceed ten days. All lines, including power and transport facilities, connecting to a pole mounted network node, shall be placed in duct or conduit that is buried below ground, provided that a network node attached to a utility pole may connect to aerial transport facilities for which an attachment right has been granted for attachment to the utility pole by the utility pole owner.

#### 12.2.5 - Generators Not Allowed

Electric generators are prohibited in the public right-of-way to provide back-up power to a network node.

#### 12.2.6 - Tree Maintenance

A network provider shall ensure appropriate clearance from any trees and obtain any required permits if tree trimming is warranted.

#### 12.2.7 - Signage

- A. A network provider shall post its name, location identifying information, and emergency telephone number in an area on the network node, aerial equipment, manholes and fiber that is

visible to the public but that shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the director.

- B. A network provider shall not post any other signage or advertising in the public right-of-way.

#### 12.2.8 - Repair

A network provider will promptly repair any damage to City property from the network provider's installation, placement, attachment, repair, modification, removal, operation, use, or relocation of a network node promptly and repair and return such property to its original condition. The City may opt to perform the repair and charge it to the network provider if the network provider fails to perform the repair if the unrepaired condition creates an imminent danger to the public.

#### 12.2.9 - Graffiti Abatement

A network provider shall remove all graffiti on any of its network nodes, transport facilities, poles, or other property or equipment located in the public right-of-way.

#### 12.2.10 - No Interference and No Liability

- A. A network provider, by operating its network nodes, must not cause interference to the City's radio and emergency radio frequency, wireless network, traffic signal network, or communications operations.
- B. Following installation or modification of a network node, the director may require a network provider to test the network node's radio frequency and other functions to confirm it does not interfere with the City's operations or equipment.
- C. The City is not responsible for any inconvenience, annoyance, or injury to facilities or activities conducted by a network provider, arising from the need to repair any portion of the public right-of-way, or from the making of any necessary alteration or improvements, in, or to, any portion of the public right-of-way, or in, or to the City's fixtures, appurtenances or equipment.
- D. A network provider shall maintain all its equipment and appurtenances in a timely and responsible manner.

#### 12.2.11 - Abandoned Facilities

A network provider must remove all abandoned network nodes, node support poles, or transport facilities from the public right-of-way. Unless the director determines that the abandoned network nodes, node support poles, or transport facilities must be removed immediately to ensure public health, safety, and welfare, a network provider has a reasonable time to completely remove the abandoned network node, not to exceed 30 days after abandoning the network node.

#### 12.2.12 - Removal Required by City

- A. A network provider must, at its cost, promptly disconnect, remove, or relocate a network node if the director determines that the disconnection, removal, or relocation (a) is necessary to protect the public health, safety, or welfare, or City property, (b) the network node is adversely affecting City operation or operations of City property, or (c) a network provider fails to obtain permits and certifications required by law. If there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable network node at the network provider's expense.
- B. A network provider shall reimburse City for the City's actual cost of removal of its network node within 45 days of receiving the invoice from the City.

#### 12.2.13 - Removal or Relocation by Network Provider

- A. If the network provider removes or relocates a network node at its own discretion, it shall notify the director in writing not less than 10 business days prior to removal or relocation. The network provider shall obtain all permits required for relocation or removal of its network node prior to relocation or removal.
- B. A network provider's removal or relocation does not entitle the network provider to fee or rate refunds for network nodes that have been removed or relocated.

#### 12.2.14 - Removal or Relocation Required for City Project

- A. A network provider shall remove or relocate a network provider's facility at the network provider's cost whenever the director determines that the relocation or removal is required for the construction, completion, repair, widening, relocation, or maintenance of public right-of-way or City or other public utility facility, or use in connection with any City construction or maintenance project.
- B. If the network provider fails to remove or relocate its facility within the time period identified by the director, the City will remove the facility at the network provider's cost, without further notice, and the network provider will reimburse the City for its removal expenses (including reasonable overhead and storage).

#### 12.2.15 - No City Affiliation

A network provider, and its employees, contractors, and agents shall not at any time represent themselves as being associated with the City of Austin. A network provider shall inform any person asking of the company they work for and that it is allowed to work on service poles pursuant to state law.

#### 12.2.16 - Restoration

A network provider shall repair any damage to the right-of-way and City property, and the property of any third party resulting from the network provider's removal or relocation activities within 10 days following the date of removal or relocation, at the network provider's cost, including restoration of the right-of-way and property to substantially the same condition as it was immediately before the date the network provider installed its facility, including restoration or replacement of any damaged trees, shrubs or other vegetation.

#### 12.2.17 - Safety

- A. A network provider shall use protective equipment to ensure the safety of all personnel working on the network provider's network nodes and transport facilities, as well as pedestrians and vehicular traffic. A network provider shall ensure all personnel are qualified to work in the public right-of-way. A network provider shall ensure its workers follow all appropriate safety protocols.
- B. Whenever traffic is diverted, detoured, or impacted, a network provider must ensure that competent and certified individuals are on site to provide temporary traffic control. A network provider shall not perform work over an active travel lane or pedestrian route without the appropriate traffic control in place.
- C. City inspectors may halt work if safety practices or City standards are violated. The City will not be responsible for any additional expenses that are incurred, to include extension of permits or investigation fees.
- D. In the event of contact with electrical lines, call 512-322-9100 to provide information on the incident. Call 911 if emergency response is required.
- E. In the event of contact with traffic signal lines or equipment, call 512-974-2000 and 512-974-4075 to report the incident.

#### 12.2.18 - Radio Frequencies

- A. A network provider must identify the proposed frequency or frequencies to be used by the network node. The director may deny the application or request a different frequency be used if use of such frequencies would interfere with City operations.
- B. A network provider must provide a Radio Frequency Emission Certification for each network node by a Telecommunications Engineer certified by the International Association for Radio, Telecommunications and Electromagnetics (iNARTE) or similarly recognized certifying body with experience regarding radio frequency transmissions.
- C. A network provider shall adhere to the FCC's most current federal radio frequency emissions standards set forth in OET Bulletin 65, as may be updated or amended, or other applicable regulation.

#### 12.2.19 - Facility Inventory

- A. Network provider shall maintain, and provide to the director upon request, a list of its network nodes, node support poles, transport facilities, and associated equipment, in the public right-of-way.
- B. Network provider shall maintain and make available to the director accurate as-built drawings of its network nodes and transport facilities in a format approved by the director and in accordance with any applicable City criteria manual.

#### 12.2.20 - Unauthorized Network Nodes and Transport Facilities

- A. The director will review proposed network nodes, transport facilities, and other equipment to ensure compliance with applicable laws.
- B. The director shall deem as unauthorized any type of facility, node, or equipment not authorized by law or installed or operated in violation of law. The director at his or her sole discretion may, after providing 30 days written notice, remove or require the network provider to remove unauthorized equipment at the provider's expense without any liability to the City. The City will invoice and the provider shall reimburse the City within 45 days of receipt of the invoice for the City's cost for removal of unauthorized equipment.
- C. Unauthorized equipment, if determined by the director to interfere with the normal operation of City infrastructure or public right-of-way, may be removed immediately by the City upon the expiration of 24-hours advance notice to a provider. The City will invoice and the provider shall reimburse the City within 45 days of receipt of the invoice for the City's cost for removal of unauthorized equipment.

#### 12.2.21 - Installation

- A. Installation of network nodes will be done in a good and workmanlike manner and in accordance with the requirements established by the director in compliance with all applicable laws, ordinances, codes, standards, criteria, rules and regulations.
- B. Installation of a network node or network node support pole shall not interfere with the operation of City infrastructure unless approved by the City for a specific time and location. Interference with traffic signal operations may require the presence of City employees.
- C. Installation or maintenance activities shall not impede traffic unless authorized by a permit.

#### 12.2.22 - Electrical Supply

- A. A network provider shall be responsible for obtaining any required electrical power service to the network node. The City will not be liable to the network provider for any stoppages or shortages of electrical power furnished to the network node, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the City or the act or

omission of any other tenant or user of the structure. The network provider will not be entitled to any abatement of any fee for any such stoppage or shortage of electrical power.

- B. The network provider shall be responsible, at the network provider's expense, for correcting any discovered pre-existing non-conforming conditions related to the provision of power for a network node.
- C. If the network node is to be installed on a different pole than the electric service is installed, it is the network provider's responsibility to install the necessary underground conduit and cabling to provide power to the network node.
- D. Network provider shall install a device or devices to disconnect network provider's network node, such as a fused linkage, cut-off switch or similar mechanism that is capable of disconnecting and de-energize network provider's network nodes so that the City personnel performing maintenance may quickly and safely shut down the network node so that they are not exposed to dangerous electrical current or radiofrequency radiation or electromagnetic fields generated by the network node. The disconnect device must be clearly identified and easily accessed, and the operation of the cut-off switch must be obvious and intuitive. The City will instruct its maintenance personnel to use the disconnect device to de-activate the network node while performing work in proximity to the network node.
- E. Network provider electric meter may not be installed on a traffic pole, unless the director determines that placement on the traffic pole is necessary to avoid the use of right-of-way surface for the meter placement and the meter's placement is consistent with the applicable design standards.

### 12.3 - Network Node

A network provider must submit an application in a form to be determined by the director and receive a permit to install a network node in the public right-of-way. An application to install a network node must include information that the director determines is necessary to review and approve the application, including, but not limited to:

1. A completed application on a form approved by the director, for each location requested;
2. A map showing the intended location of the proposed facility in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any. This map should also include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;
3. Representative drawings or pictures of the specific node location;
4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud; and
5. Details and graphics on the type of network facility to be installed and installation method proposed for the City's approval.

### 12.4 - Collocation on a Traffic Pole

#### 12.4.1 - Eligibility and Application

- A. Network providers may request to collocate network nodes on traffic poles provided that network nodes or associated equipment may only be installed and enclosed in the manner according to the allowed design, installation, and construction details for a traffic pole collocation shown and described in Exhibit A (Figures 1 through 7) incorporated into and attached to this Rule. For traffic poles with street light fixtures mounted by a vertical extension to the traffic pole, the director may allow an antennae to be mounted to the vertical extension supporting the street light in a manner that does not materially deviate from the construction details for a traffic pole collocation shown and described in Exhibit A (Figures 1 through 7),

provided the overall height for the top of the antenna shroud is not more than 35 feet above ground level.

- B. To be eligible to request a collocate a network node on a traffic pole, a network provider must execute a Traffic Pole Attachment Agreement in the form attached and incorporated into this Rule as Exhibit B. No attachment may be placed on a traffic pole unless an application for the attachment is submitted and approved by the director in accordance with Chapter 15-7 (Use of City-Owned Utility Infrastructure) of the City Code.
- C. In order to minimize structural impact to the traffic pole or negative visual impact to the surrounding area, the director may deny an application for attaching to a traffic pole upon which a network node has been attached or for which a complete application for attachment has been approved or is pending approval.
- D. A network node or any associated equipment may not obstruct the visibility of a traffic control device or sign. A network node or any associated equipment may not interfere in any way with the function or operation of a traffic control device or sign. Should traffic control devices or signs be added, modified, or moved, a network provider shall relocate or remove its equipment after receiving written notice.
- E. Network providers shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.
- F. Unless approved by the director, a network node, including any shroud or mounting structure, shall be installed a minimum of 6" above the traffic mast arm infrastructure. The upper height limit for an antenna placed atop a traffic pole is 35 feet above ground level.
- G. Exposed equipment and shrouds shall match the existing pole color to the extent possible.
- H. If the director determines that cable necessary to connect the components of a node located on a traffic pole cannot be located internally within the traffic pole, external cables and wires must be enclosed in conduit. The maximum number and size of conduit that may be attached to a traffic pole is two 1½" EMT conduit. External conduit attached to a traffic pole must match the color of the existing pole. External conduit should be installed flush to the pole and in an unobtrusive manner as possible. If needed, the network provider may have a one foot radius drip loop exposed. Conduit shall be installed as to not conflict with access to any traffic signal activities.
- I. An application to collocate on a traffic pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
  - 1. A completed application on a form approved by the director, for each location requested;
  - 2. A map showing the intended location of the proposed network node and transport facilities serving that network node in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any. The map must also include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;
  - 3. Representative drawings or pictures of the specific traffic pole location.
  - 4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
  - 5. Details on the attachment method proposed for the City's approval. No penetration of the traffic pole is allowed;
  - 6. A photograph of the specific traffic pole to be attached to;
  - 7. Pole load analysis in accordance with Section 12.4.2; and
  - 8. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:



- a. the specific location of the existing traffic pole;
- b. location and method of proposed installation (trench, bore, existing conduit pull) of proposed and existing transport facilities necessary to connect the network node to the PSTN;
- c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
- d. proposed work areas required to install infrastructure that will disrupt or divert traffic;
- e. placement of network node and equipment on the traffic pole as well as any ground equipment, cabinets, etc.;
- f. any and all existing utilities, both underground and overhead; and
- g. the specific location of the existing traffic pole using latitude/longitude in decimal degrees to the 6th decimal point.

#### 12.4.2 - Traffic Pole Load Analysis

- A. Each application for collocation of a network node on a service pole shall include a load analysis prepared by a Texas Registered Professional Engineer and must conform to the Transportation Department's approved process and methodology.
- B. The load analysis shall take into account and allow space for all attachments which are currently constructed or planned for future construction.
- C. The following information is required to be submitted:
  1. Specific location with X, Y coordinates and Traffic Signal Pole ID;
  2. Picture of entire Traffic Signal Pole;
  3. Traffic Signal Pole brand information (height and class);
  4. Height of each existing attachment present on the traffic pole and proposed height of wireless attachment;
  5. Identification of each attachment present on the traffic pole;
  6. Detailed drawings of the proposed wireless attachments and physical specifications (weight and dimensions);
  7. Electric Service Planning Application in accordance with the Austin Energy Design Criteria Manual;
  8. Type, height, and size of all attachments present on the traffic pole; and
  9. Ownership information on all attachments.

#### 12.4.3 - Inspections

- A. Authorized City employees may inspect the collocation of network nodes on a traffic pole to ensure compliance with all applicable laws. Such inspection may occur during or after construction.
- B. In the event of an emergency situation, the director may, but is not required to, notify a network provider of an inspection. The City may take action necessary to resolve the emergency situation and the director shall notify the network provider as soon as practically possible after resolution is complete.
- C. The director may perform visual inspections of any network nodes located in the public right-of-way as the director deems appropriate without notice. If the inspection requires physical contact with the network node, the director shall provide written notice to the network provider within five

business days of the planned inspection. The network provider may have a representative present during such inspection.

## 12.5 - Node Support Poles and Associated Facilities

A network provider must submit an application in a form to be determined by the director and receive a permit to install a node support pole in the public right-of-way.

### 12.5.1 - Application for Installation of Node Support Pole within the Right-of-Way

- A. An application for placing or constructing a node support pole in the public right-of-way must be made to the Development Services Department in a form to be provided by the director and comply with all applicable laws and regulations, including any applicable zoning or design standards or manuals.
- B. An application to install a node support pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
  1. A completed application on a form approved by the director, for each location requested;
  2. A map showing the intended location of the proposed facility in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any. The map must include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;
  3. Representative drawings or pictures of the specific pole location;
  4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
  5. Details and graphics on the type of network facility to be installed and installation method proposed for the City's approval;
  6. Justification for installation of new facility, including analysis for any nearby poles determined as unsuitable; and
  7. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:
    - a. the specific location of the proposed node network pole and associated facilities;
    - b. location and method of proposed installation (trench, bore, existing Conduit pull) of proposed and existing transport facilities necessary to connect the node to provider's network;
    - c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
    - d. proposed work areas required to install infrastructure that will disrupt or divert traffic;
    - e. placement of network node and equipment on the network pole as well as any ground equipment, cabinets, etc.;
    - f. any and all existing utilities, both underground and overhead; and
    - g. the specific location of the proposed node support pole using latitude/longitude in decimal degrees to the 6th decimal point.

## 12.6 - Transport Facilities

- A. A network provider must obtain right-of-way permits by submitting an application in a form to be determined by the director for excavation and facility installation and coordinate installation with utilities.
- B. A network provider must submit an application to the Development Services Department in a form to be determined by the director and obtain a permit to construct transport facilities in the public right-of-way.

#### 12.6.1 - Application for Transport Facility

- A. An application must be made to the Development Services Department and comply with all applicable laws and regulations, including any applicable zoning or design manuals.
- B. An application to install a node support pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
  1. A completed application on a form approved by the director, for each location requested;
  2. A map showing the intended location of the proposed facility in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any;
  3. Representative drawings or pictures of the specific location;
  4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
  5. Details and graphics on the type of transport facility to be installed and installation method proposed for the City's approval;
  6. Justification for installation of new facility, including analysis for any nearby transport facilities determined as unsuitable; and
  7. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:
    - a. the specific location of the proposed network nodes pole and associated facilities being served by the transport facility;
    - b. location and method of proposed installation (trench, bore, existing conduit pull) of proposed and existing transport facilities necessary to connect the node to the network provider's network;
    - c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
    - d. proposed work areas required to install infrastructure that will disrupt or divert traffic;
    - e. placement of facilities as well as any ground equipment, cabinets, etc.;
    - f. any and all existing utilities, both underground and overhead; and
    - g. the specific location of the existing traffic pole using latitude/longitude in decimal degrees to the 6th decimal point.

#### 12.7 - Design Standards

The intent of the design standards is to ensure that the installation of network nodes, node support poles, and equipment cabinets is compatible with existing land use and urban design regulations.

The design standards in this section apply to the installation of network nodes, node support poles, cabinets, and associated equipment within public right-of-way throughout the City unless more specific design elements, concealment measure, or camouflage requirements are set out for a specific design or

historic district. A design district is an area within the City with a zoning classification or other City Code designation for which unique design and aesthetic standards are applied uniformly. Design districts include, but are not limited to:

- (1) the Central Business District (CBD);
- (2) numerous Planned Unit Developments, Neighborhood Conservation Combining Districts, Planned Development Agreements, Master Development Agreements, and small-area Regulating Plans;
- (3) the Waterfront Overlay District;
- (4) neighborhoods subject to the Residential Design and Compatibility Standards and/or adopted neighborhood plans;
- (5) numerous historically significant districts, such as the East 6th/Pecan Street Overlay, Castle Hill Historic District, and general Historic District and Historic Area Combining Districts;
- (6) the University Neighborhood Overlay District;
- (7) the Lake Austin Overlay District;
- (8) the Traditional Neighborhood District; and
- (9) commercial and multi-family development subject to standards codified as "Design Standards and Mixed Use."

#### 12.7.1 - Design Standards City-Wide

- A. Where design district or historic district boundaries overlap, the more restrictive of the standards shall apply.
- B. Site Selection - It is the City's policy to preserve as open, as much as possible, the surface and air above the public right-of-way to keep sight-lines open for public safety and aesthetic purposes. To achieve that end, permits to use the public right-of-way for network nodes and node support poles will be prioritized in the following order:
  1. First, collocation on existing utility poles. The allowed design, installation, and construction details, for utility pole collocation is shown and described in the Utilities Criteria Manual.
  2. Second, collocation on existing traffic poles - In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for network node installation. Only one antenna and base equipment cabinet may be permitted on a traffic pole. The design, installation, and construction must comply with section 12.4.1 of this Rule.
  3. Third, collocation on non-decorative streetlight poles. Network nodes may not be placed on decorative poles. The allowed design, installation, and construction details for non-decorative streetlight poles is shown and described in the Utilities Criteria Manual.
  4. Last, node support poles. In order to receive a permit to install a node support pole, the network provider must demonstrate that no collocation options are available for the service area. Node support poles must be separated by at least 250 feet.
- C. Underground Utility Districts.
  1. Nodes support poles may not be placed in public right-of-way in areas of the City where wireline based public utilities such as electricity and telecommunications are provided by underground distribution networks rather than by aerial support on utility poles. Such an area is, for the purposes of this Rule, an Underground Utility District: an area where poles, overhead wires, and other above-ground utility equipment have been removed and placed underground or have been approved for future placement underground.

2. If the director determines that a section of public right-of-way within an Underground Utility District has, as of September 1, 2017, utility poles supporting aerial wireline based public utility distribution extending more than 300 feet, node support poles may be placed in that section of right-of-way subject to the requirements in this Rule applicable to node support poles.
  3. Except for base-mounted and shrouded equipment for collocations on traffic poles consistent with construction details for a traffic pole collocation set out in section 12.4.1 of this Rule, network node equipment, other than the antenna, must be placed below ground in an Underground Utility District.
- D. Equipment shall be installed in a manner that does not hinder pedestrian walkways or interfere with traffic signal equipment. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with the Americans With Disabilities Act and shall not obstruct an existing or planned sidewalk.
  - E. For network nodes placed on existing poles, the color of the network nodes shall match the existing pole color, such that the network nodes blend with the existing pole.
  - F. Where applicable, node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole. The planting zone is an area adjacent to the curb in which street trees may be planted. The zone is also intended for the placement of street furniture, public utility equipment such, and similar elements in a manner that does not obstruct pedestrian access or motorist visibility.
  - G. Faux Treatments - Concealment may not include faux trees, faux landscaping, or other faux decorative items.
  - H. The network provider is responsible for all make-ready costs, whether performed by the provider, a third party or the City.

## 12.7.2 - Design District Requirements

### 12.7.2.1 - Downtown Austin District

- A. Downtown Austin is an area bounded by MLK Blvd., IH-35, Lady Bird Lake, and Lamar Blvd., established in the Downtown Austin Plan.
- B. Site Selection - Network nodes may only be located in the following public right-of-way locations in Downtown Austin by order of preference:
  1. First, Colocation on Traffic Poles - Great Street standards consist of eight traffic pole foundations at each intersection. In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for small cell equipment installation. Only one antenna and equipment cabinet may be permitted on a traffic pole and must comply with the allowed design, installation, and construction details for a traffic pole collocation set out in section 12.4.1 of this Rule.
  2. Second, colocation on existing service poles and other non-decorative poles. Great Street poles are considered decorative poles and not available for the attachment of network nodes.
- C. Underground Utility District - Downtown Austin is an Underground Utility District.
- D. If an existing utility conflict makes underground placement unfeasible, applicants may request a cabinet on the sidewalk and coordinate with City Urban Design on the design and placement of the cabinet to ensure that the cabinet does not interfere with the development of Great Street standard streetscapes. If surface placement is requested due to utility conflicts, an equipment cabinet:

1. may only be placed in the designated planting zone; and
  2. may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming necessary to maintain the tree's natural shape and growth pattern.
- E. Network nodes must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.

#### 12.7.2.2 - University Neighborhood Overlay

- A. The University Neighborhood Overlay (UNO) includes the West Campus neighborhoods of Outer West Campus, Inner West Campus, Guadalupe, and Dobie. The boundaries of UNO are established by Appendix C of Chapter 25-2 of the City Land Development Code.
- B. Network nodes may not be placed on the UNO Pecan Street decorative poles.
- C. Node support poles shall be placed within the planting zone, in alignment with existing or future UNO decorative poles and street trees. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.
- D. Nodes support poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.
- E. Network node and Node Support Pole Design - Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
1. Placement - Network nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
  2. Color - The color of network nodes and node support poles must match the color of the UNO Pecan Street decorative pole such that they blend with the color of the district's streetscape elements.
  3. The total height of a node support pole plus any network equipment may not exceed 30 feet from ground level.
- F. Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection D.
1. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.
  2. Applicant shall coordinate the placement of any proposed sidewalk cabinet with Urban Design to ensure that that the cabinet does not interfere with the development of UNO standard streetscapes.

#### 12.7.2.3 - Core Transit Corridors, Waterfront Overlay, Special Regulating Districts, Planned Unit Developments (PUD), and Planned Development Agreements (PDA)

##### A. Geographic Areas

1. Core Transit Corridors - Core Transit Corridors (CTCs) and Future Core Transit Corridors (FCTCs) were established in 2005 and 2006 by City Council in order to improve design standards along major roadways. The roads identified as CTCs and FCTCs are established in Chapter 25-2, subchapter E of the City Land Development Code.

2. The Waterfront Overlay encompasses land surrounding Lady Bird Lake and the Colorado River and includes parkland, part of Downtown, and the South Central Waterfront. The boundaries of the Waterfront Overlay district are established by Appendix B of Chapter 25-2 of the City Land Development Code.
  3. Special Regulating Districts are areas zoned as Transit Oriented Development (TOD), North Burnet Gateway (NBG), and East Riverside Corridor (ERC).
  4. Planned Unit Developments (PUDs) are a type of special purpose zoning district established in Chapter 25-2 of the City Land Development Code.
  5. Planned Development Agreements (PDAs) are a type combining zoning district established in Chapter 25-2 of the City Land Development Code.
- B. Node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.
- C. Poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.
- D. Node and Pole Design - Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
1. Placement - Network nodes and equipment shall be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
  2. The color of a network node placed on any existing pole must match the color of the existing pole.
- E. Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.

### 12.7.3 - Historic Districts

- A. The City of Austin has both locally designated historic districts and National Register Historic Districts. Properties in Local Historic Districts are indicated by the addition of "HD" in the zoning designation for each parcel. National Register Historic Districts are administered by the Texas Historical Commission. A list of contributing properties and district maps can be found on the City of Austin's Historic Districts webpage. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- B. Node support poles shall be placed within the planting zone and aligned with any existing trees or poles. Node support poles shall be placed between street trees, with a minimum separation of 15 feet from tree to pole.
- C. Node support poles may not be placed in the public right-of-way within the Congress Avenue, Bremond Block, or Sixth Street National Register Historic Districts.
- D. Network nodes may not be placed on historic or decorative poles.
- E. Network Node and Node Support Pole Design - Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.

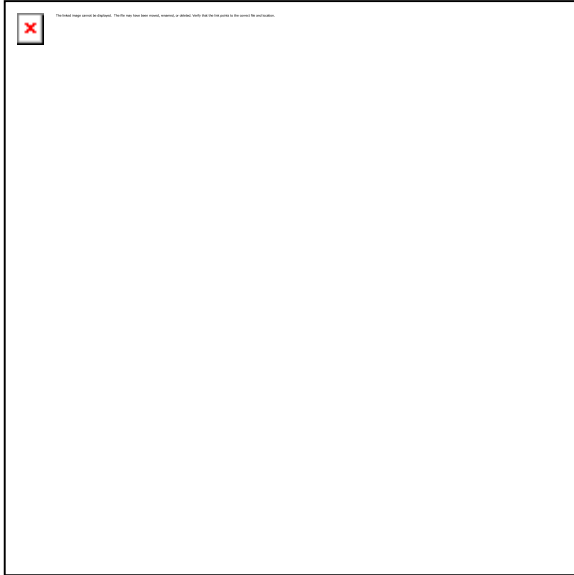
1. Placement - Nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
  2. The color of a new node placed on any existing pole must match the color of the existing pole. For new poles in districts with a designated historic pole, the pole and node shall match the color of the designated historic pole for that district.
- F. Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.

#### 12.7.4 - Historic Landmarks

- A. Historic Landmarks in the City of Austin are indicated by the addition of "-H" zoning designation for each parcel. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- B. Site Selection - Nodes or new node poles must be placed at least 20 feet from a property zoned as a Historic Landmark.

EXHIBIT A -





ANTENNA SPECIFICATIONS			
Antenna Type	Panel	Panel	Panel
Dimensions (HxWxD)	8" x 8" X 4"	9.7" X 12.8" X 3.3"	24.3" X 12.1" X 7"
Weight	9.9 lbs	11.5 lbs	13.0 lbs
Cable type	Coaxial Cable	Coaxial Cable	Coaxial Cable
Mounting	Pole or wall	Pole or wall	Pole or wall
Antenna Type	Panel	Canister (omni)	Canister (omni)
Dimensions (HxWxD)	9.7"X 12.8" X 4.7"	24.6" X 16" (dia.)	24" X 14.6" (dia.)
Weight	17 lbs	39.9 lbs	22.1 lbs
Cable type	RJ 45 or Coaxial Cable	Coaxial Cable	Coaxial Cable
Mounting	Pole or Base	Pole or Base	Pole or Base

RF SOURCE SPECIFICATIONS				
Dimensions (HxWxD)	7.87" X 7.87" X 3.93"	20.125" X 15.912" X 7.904"	8.42"X5.9"X2.75"	8" X 13" X 6.5"
Weight	9.92 lbs	11.2 lbs	1.65 lbs	15.8 lbs
Mounting	Base	Base	Base	Base
Power Requirement (AC)	8 Amps	10 Amps	5 Amps	10 Amps

Figure 1 -

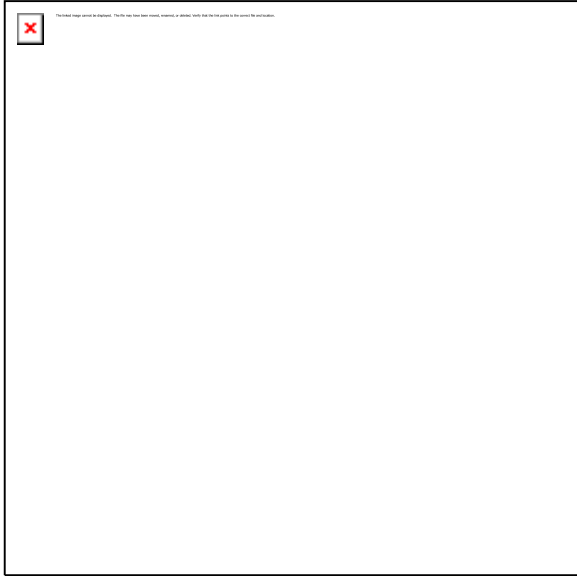


Figure 2 - Pole Elevation

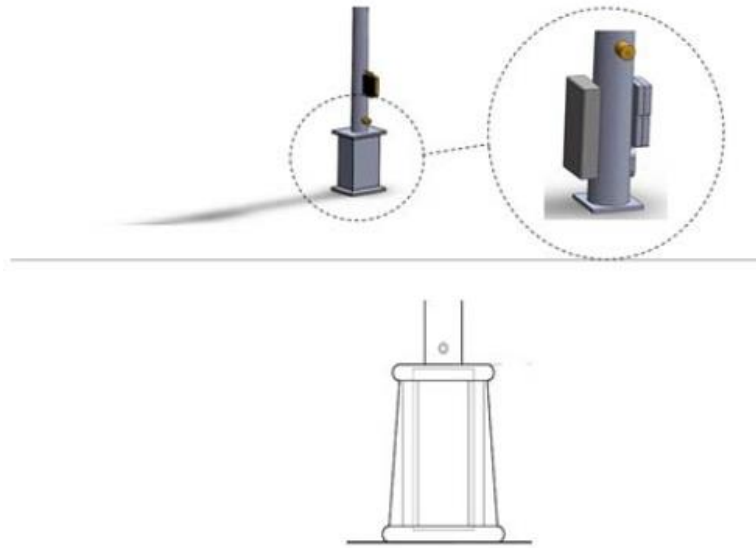
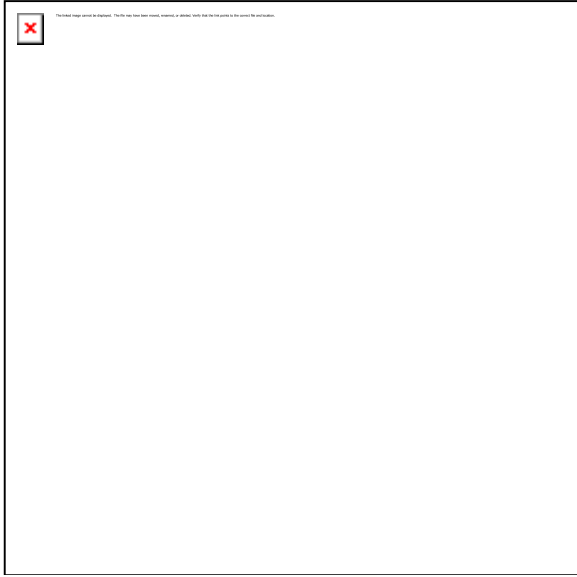
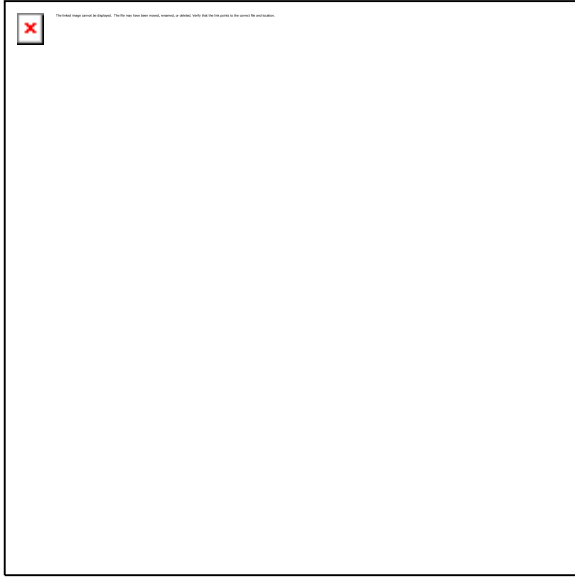
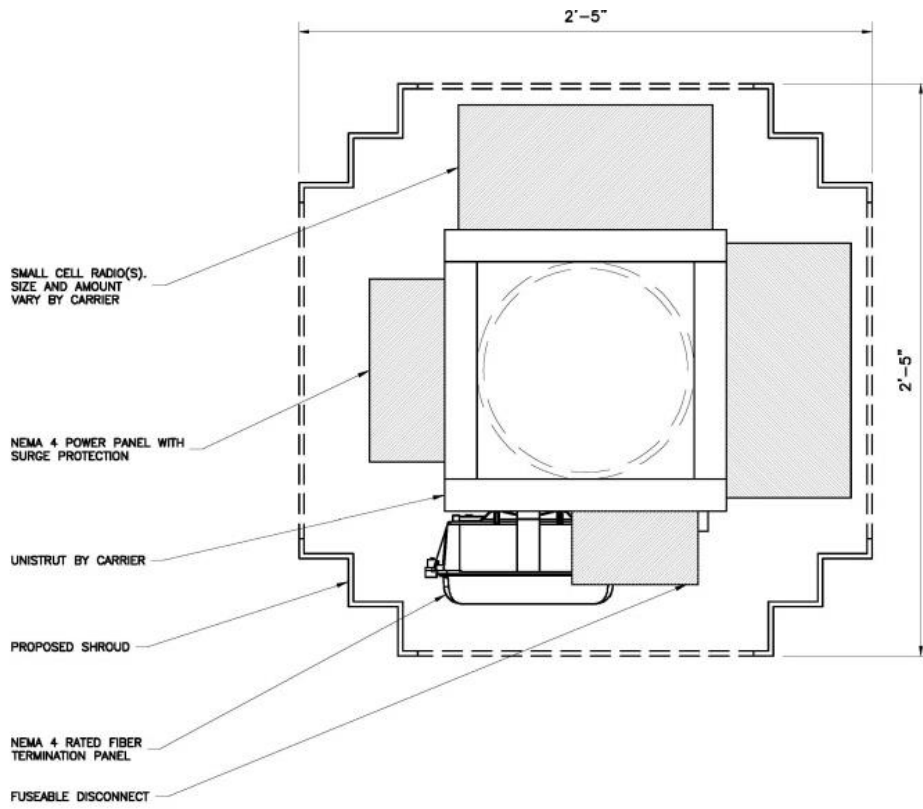


Figure 3 - Equipment Enclosure

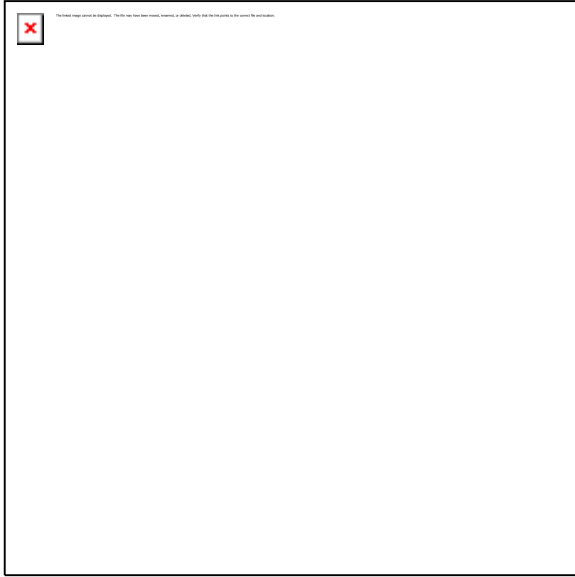


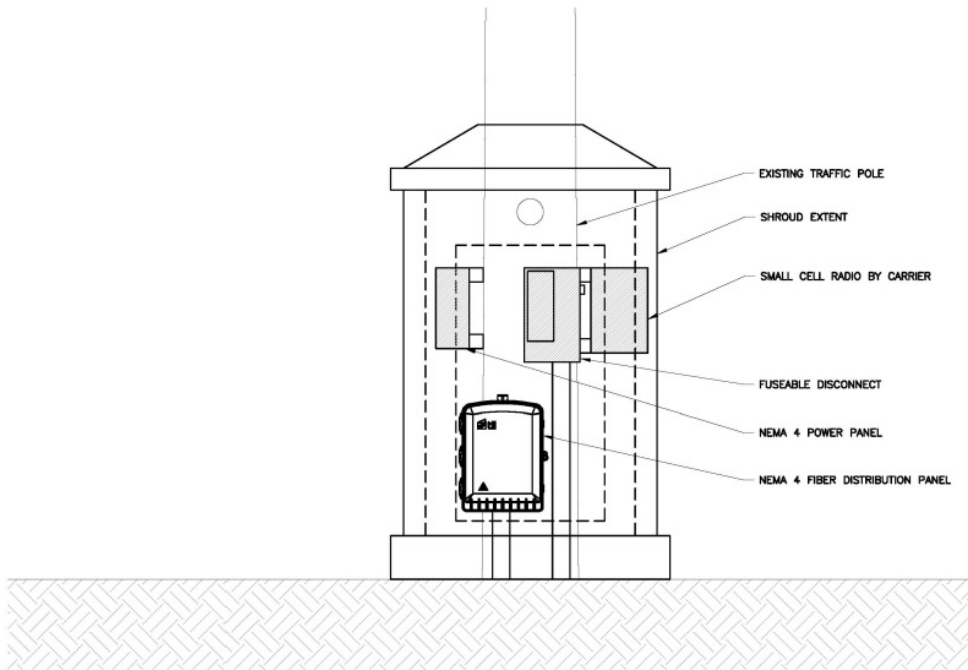


**EXAMPLE EQUIPMENT LAYOUT**

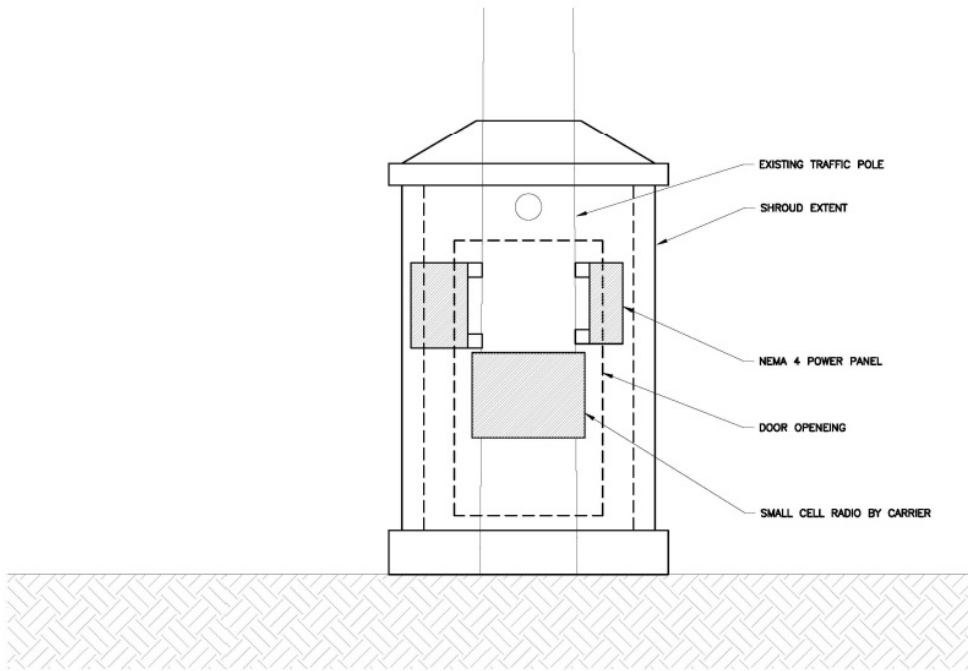
1  
X-3  
N.T.S.

Figure 4a - Equipment Cabinet Plan





2 **EXAMPLE ELEVATION I**  
X-3 N.T.S.



3 **EXAMPLE ELEVATION II**  
X-3 N.T.S.

Figure 4b - Equipment Cabinet Elevation

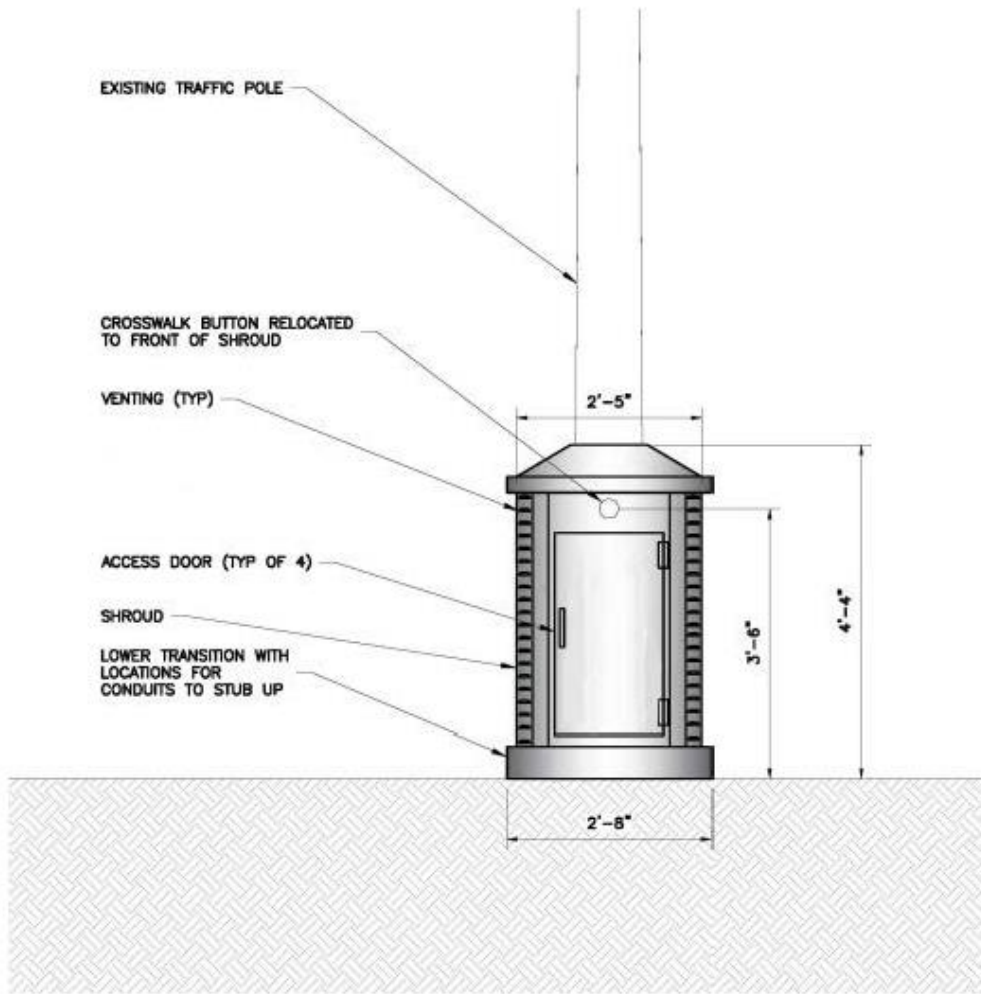
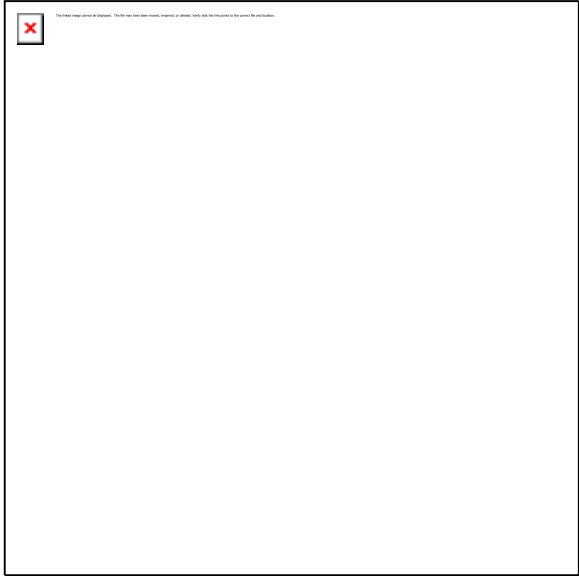


Figure 5 - Elevation



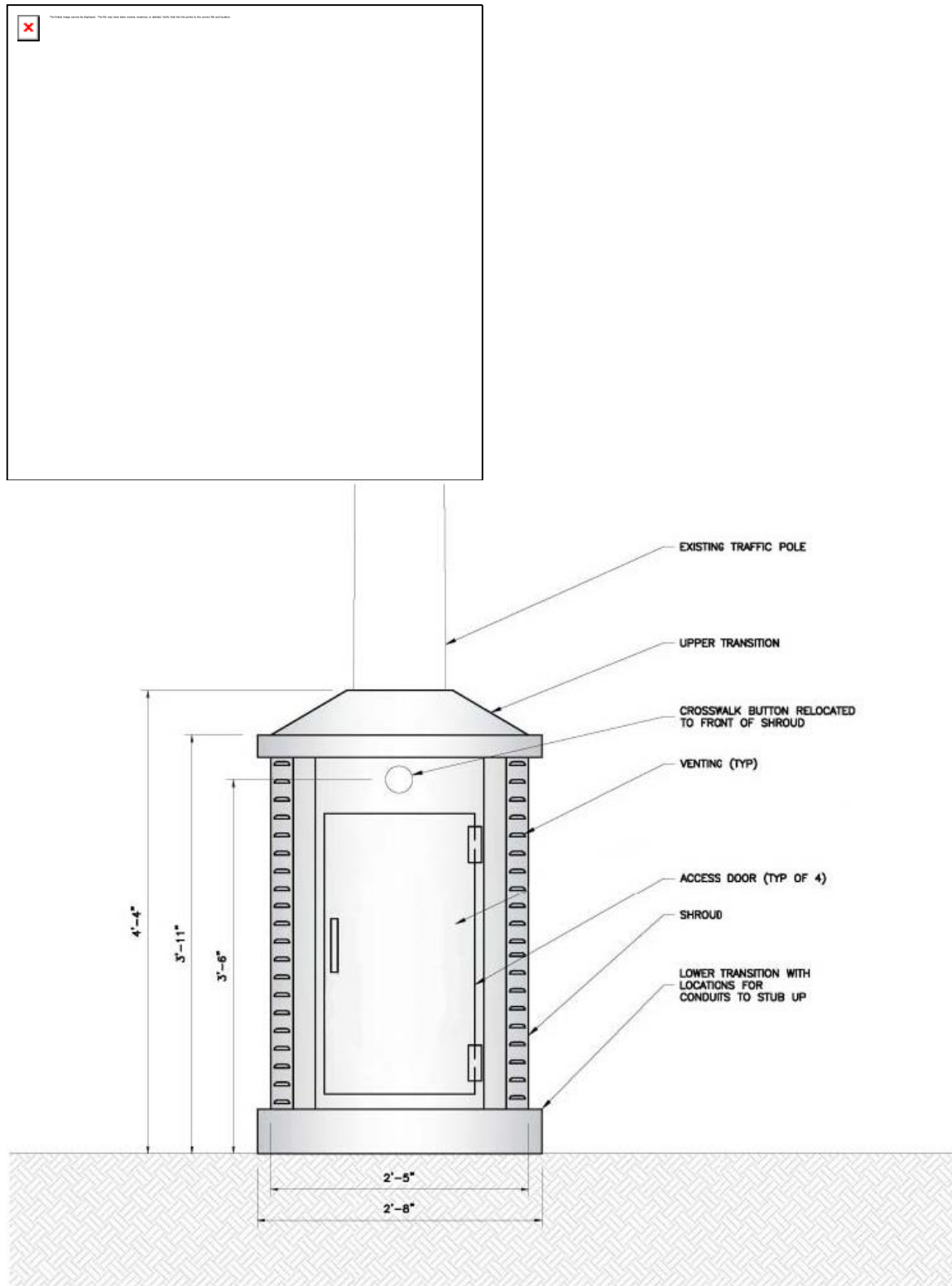
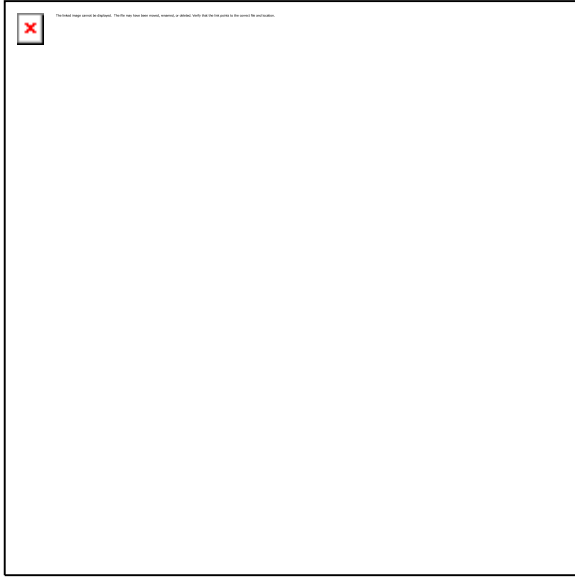
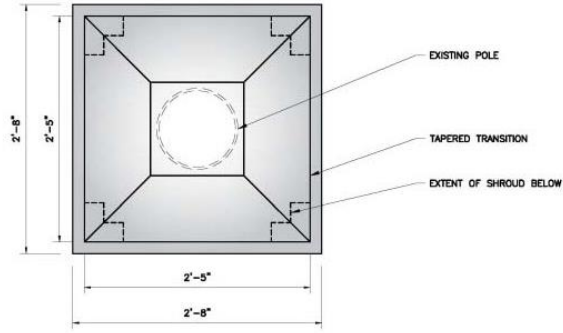


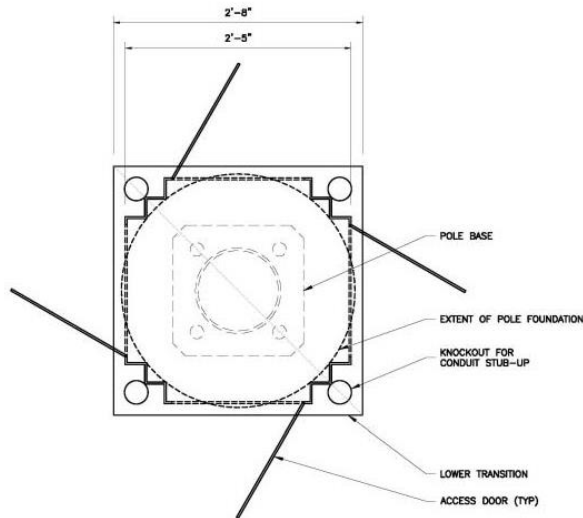
Figure 6 - Elevation Detail

Figure 7 - Plan View





**2 UPPER PLAN VIEW**  
X-2 N.T.S.



**3 LOWER PLAN VIEW**  
X-2 N.T.S.

Exhibit B - TRANSPORTATION CRITERIA MANUAL INFRASTRUCTURE USAGE AGREEMENT (Traffic Signal Pole)

License Agreement between City of Austin and Network Provider

This License Agreement ("Agreement") is between the City of Austin, a Texas home-rule municipal corporation ("COA"), and [name], a [state] [corporate form] ("Licensee"); hereinafter referred to individually as "Party" or collectively as "Parties".

WHEREAS, Licensee desires to attach equipment to provide wireless services within the City of Austin; and

WHEREAS, Licensee will need to place and maintain equipment and other facilities within the City's jurisdiction and desires to place such equipment and facilities on City-owned traffic signal poles, and within the public right-of-way; and

WHEREAS, the City is willing to grant Licensee revocable, non-exclusive licenses to use certain COA owned traffic signal poles on the strict terms and conditions set forth in this Agreement and subject to the terms of the City of Austin code (Austin City Code Chapter 15-7) and the rules and regulations of the City of Austin adopted thereunder, as each may be amended from time to time; and

WHEREAS, COA is willing to allow Licensee to undertake the make-ready construction work necessary to prepare certain COA-owned traffic signal poles to accommodate Licensee's equipment, and facilities under the strict terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, COA and Licensee do hereby mutually covenant and agree as follows:

#### Article 1

#### **Definitions and Construction**

1.1 Definitions: For purposes of this Agreement, unless specifically set out below, terms have the meanings assigned to them by Section 15-7-1 of the City of Austin City Code:

- A. Annual Usage Charge means the recurring charge that Licensee is to pay COA annually under this Agreement for the use of Traffic Poles. The Annual Usage Charge is in addition to any Costs and Filing Fees Licensee may incur during a Contract Year, and shall be determined by COA as of December 1 of each Contract Year, other than the first Contract Year. To the extent lawfully permitted, the Annual Usage Charge for any Contract Year shall be the number of Attachments shown on COA's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year. Unless otherwise expressly provided in this Agreement, Annual Usage Charges are not refundable.
- B. Application means Licensee's formal request in the form required by the COA to attach Licensee's network node to a Traffic Pole.
- C. Attachment means each network node or equipment of a Licensee supported by, affixed to, contained in, or placed on or in a Traffic Pole.
- D. Attachment License means the contract granting Licensee an Attachment Right to a Traffic Pole.
- E. Collocate and Collocation means the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a Traffic Pole.
- F. Contract Year means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.
- G. Contractor includes subcontractors.
- H. Cost means the total cost reasonably incurred by COA for any particular task under this Agreement, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges, reasonable overhead, and reasonable general and administrative expenses. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready Work, inspections and oversight, auditing, and other services. Certain Cost rates are specified in the fee schedule adopted by the City of Austin commonly referred to as the City of Austin Fee Schedule. Cost rates shall be based on COA's actual and reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by COA in its reasonable judgment and reasonable discretion, and shall be paid by Licensee in accordance with either of the following, at COA's sole option:

1. Any advance estimate provided by COA, in which event COA shall have the right to refuse to incur the Costs until the estimate is paid; and/or
  2. Any final invoice submitted by COA. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.
- I. Effective Date means the last date on which a party signs this Agreement as shown on the signature page of this Agreement.
  - J. Filing Fee means the initial, non-refundable fee charged to Licensee for filing an Application for an Attachment License. Filing Fees are currently set by city ordinance, though will be set by COA to the extent they are no longer set by ordinance (in which case the Filing Fee shall not exceed the actual and reasonable cost to COA of reviewing and processing an Application). The Filing Fee is solely to compensate COA for reviewing and processing an Application and does not include or offset Costs or Annual Usage Charges.
  - K. Infrastructure Usage Ordinance means Austin City Code Chapter 15-7 and any other City ordinance that may be enacted to govern Traffic Pole usage or rental.
  - L. Make-Ready Work means work required to accommodate a network provider's attachments to COA infrastructure to ensure the installation meets all City codes and generally accepted engineering and construction standards.
  - M. Third Party User means any attaching entity not part of this Agreement that has, or may be granted, a valid Attachment License or other right to attach with respect to a Traffic Pole.
  - N. Unauthorized Attachment means an Attachment or any other affixing or placing of Licensee's facilities onto COA property for which Licensee does not have a valid Attachment License, or which does not comply with the terms of this Agreement, the Transportation Criteria Manual or Design Documents.
  - O. Usage Rate means, for each given Contract Year, the amount Licensee must pay COA for each Attachment.

1.2 Interpretation. Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural. The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision. The rule of construction that ambiguities in a contract are to be construed against the drafting party shall not apply to this Agreement. Any reference to a law, code or document shall mean such law, code or document as it may be amended from time to time.

1.3 Compliance with Infrastructure Usage Ordinance and Rules. This Agreement is intended to further the goals and policies of the Infrastructure Usage Ordinance and the Transportation Criteria Manual. To the extent they do not directly and irreconcilably conflict, this Agreement, the Transportation Criteria Manual and the Infrastructure Usage Ordinance are cumulative and applicable to Licensee. To the extent a provision of the Infrastructure Usage Ordinance or Transportation Criteria Manual has been rendered invalid or preempted by state or federal law, this Agreement shall control unless preempted by state or federal law. The absence in this Agreement of a provision that appears in the Infrastructure Usage Ordinance or Transportation Criteria Manual, or vice versa, shall not be construed to relieve Licensee from complying with or being subject to such provision.

## Article 2

### **Scope and Term of Agreement**

2.1 Term. This Agreement commences on the Effective Date and continues thereafter for an initial term of five (5) years. Following the expiration of the initial term, this Agreement shall automatically renew for successive one-year terms until such time that this Agreement is terminated by either Party upon giving the other Party six (6) months' written notice of termination. Expiration or termination of Licensee's privileges under this Agreement or under any valid Attachment License issued pursuant to this Agreement shall not relieve Licensee of any obligation, whether indemnity or otherwise, which has accrued prior to such expiration or termination.

2.2 Existing Facilities Only. Except as otherwise set forth in the Transportation Criteria Manual, (i) COA is under no obligation to add, build, keep, maintain, or replace Traffic Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of Traffic Poles and facilities shall remain within the sole province and discretion of COA.

2.3 Poles Only. This Agreement addresses only Attachments to Traffic Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other COA property and facilities, including without limitation conduits, mast arms, and buildings.

2.4 City Rights-of-Ways. Nothing in this Agreement shall be construed to grant Licensee any right or authorization to use or occupy the public streets or rights-of-way of the City of Austin, except for the placement of Attachments on Traffic Poles or other facilities covered by this Agreement which may be located in the public streets or rights-of-way, including access in the public streets or rights-of-way to such Attachments, subject to permit approval.

2.5 No Property Rights in Poles. All Traffic Poles shall remain the property of COA and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Traffic Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect COA's right to use, change, operate, maintain, or remove its Traffic Poles, subject to the terms and conditions hereof.

2.6 License not Exclusive. Licensee acknowledges that COA has entered into before, and may enter into in the future, similar or other agreements concerning the use of Traffic Poles by third parties, including Licensee's competitors. Nothing in this Agreement shall be construed to limit or in any way affect COA's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Traffic Pole, irrespective of the character or degree of economic competition or loss caused to Licensee.

2.7 No Cost or Expense to COA. The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense. Unless otherwise expressly provided herein, nothing in this Agreement shall be construed to require COA to expend any funds or to incur or bear any cost or expense.

### Article 3

#### **Usage Rates and Charges**

3.1 Calculation of Usage Rates. For each Contract Year, the Usage Rate shall be calculated per the Ordinance governing Traffic Pole attachments.

- A. If Licensee disagrees in good faith with COA's determination of the Usage Rate, Licensee may protest in writing within thirty (30) days of receipt of the notice. The protest shall include copies of all records and other documentation that support Licensee's position.
- B. Failure to timely protest COA's proposed Usage Rate shall constitute agreement to and acceptance of COA's determination.
- C. If Licensee does timely protest a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute.
- D. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and COA agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice.

3.2 Subsequent Annual Usage Charges. In each January of each Contract Year and continuing thereafter until the termination of this Agreement, COA will invoice for, and Licensee shall pay, within forty-five (45) days after receipt of invoice, the Annual Usage Charge for the new Contract Year.

3.3 Invoice Disputes. If Licensee believes in good faith that an invoice is incorrect, it may pay the invoice under protest. To protest an invoice, Licensee must give COA written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other

documentation supporting its position. If Licensee's protest concerns the Attachment count used to calculate the Annual Usage Charge, the parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties shall jointly conduct a physical inventory of a statistically significant number of geographical grids or other mutually agreeable census to determine the correct count. The cost to conduct such inventory or census shall be equally divided between the parties.

3.4 Adjustments. If upon resolution of a dispute between the parties under paragraph 3.1 or paragraph 3.3, a refund is due to Licensee, COA shall refund the amount of the overcharge together with interest at the rate specified in paragraph 10.5 from the date of COA's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by COA for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 10.5 from the due date of the original invoice.

3.5 No Allowances. Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon COA or its Traffic Poles, system, or facilities. All such improvements and benefits belong solely to COA, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's obligations under this Agreement.

#### Article 4

##### **General Requirements**

4.1 Public Safety. In performing any work on or near Traffic Poles supporting traffic control or warning devices. It has been determined that these devices are necessary for the safe and convenient movement of various modes of traffic. Licensee shall take all steps to ensure their construction activities do not adversely impact the operation of these devices. Should the Licensee's activities impact the effectiveness of these devices, the Licensee shall take every step necessary to return these devices to their fully functioning capacity. Licensee shall defend, indemnify and hold the City harmless from and against all claims, demands, actions, suits and judgments arising from or concerning a breach by Licensee of its obligations under this paragraph.

4.2 Laws. To the extent that the Code of the City of Austin lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning Make-Ready construction or installing Attachments. Nothing in this Agreement shall be construed as waiving other City requirements or permitting the construction of facilities other than Attachments. Attachments must conform to local, state, and federal law. Licensee's Attachments and Licensee's use of any Traffic Pole shall at all times conform to the requirements of the City Code, the Infrastructure Usage Ordinance, and the published policies and rules promulgated by the City pursuant thereto, including the Transportation Criteria Manual.

4.3 Design Manual. The Licensee shall adhere and comply with the Rules and Design Manual for Network Nodes in the right-of-way, as defined in Section 12 of the Transportation Criteria Manual.

#### Article 5

##### **Unauthorized Attachments**

5.1 Unauthorized Attachments. Licensee shall not place any Attachments on a Traffic Pole or other COA infrastructure except as authorized by an Attachment License. If one or more unauthorized Attachments are discovered, COA may, but shall not be required to, remove the unauthorized Attachment without incurring any liability to Licensee and at Licensee's sole Cost. With respect to any unauthorized Attachment, COA may opt to:

- A. require that Licensee remove such unauthorized Attachment upon demand or, if Licensee fails to do so, COA may remove such Attachment at Licensee's sole cost and risk; or
- B. require that Licensee submit an Application for each such unauthorized Attachment, together with the then-current application filing fee and Annual Usage Charge relating back to the installation date of such unauthorized Attachment, or the time at which such Attachment was deemed an unauthorized Attachment pursuant to the terms and conditions of under the terms of

the License Agreement. If such Application and charges are not received by COA within fifteen (15) days of notice of the unauthorized Attachment, COA may then opt to proceed under part A of this section.

5.2 Excessive Unauthorized Attachments. If COA determines that Licensee has made more than fifty (50) Unauthorized Attachments cumulatively during any Contract Year, Licensee shall be considered to be in material breach of this Agreement and COA will have the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 6 of this Agreement.

5.3 Remedies Cumulative. The remedies afforded COA under this agreement are in addition to any civil or criminal penalties provided by the Infrastructure Usage Ordinance for Unauthorized Attachments or related rules.

5.4 Ratification Must Be in Writing. No act or failure to act by COA with respect to an Unauthorized Attachment or any other unauthorized use of COA Traffic Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

## Article 6 Termination

6.1 Right of Suspension. If Licensee fails either to make any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or to perform timely any material obligation under this Agreement, and such default continues for thirty (30) days after the date the payment or performance is due, then, in addition to any other available right or remedy, COA may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee and decline to review any application for Attachment Licenses of Licensee, until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension.

6.2 Termination of Agreement by COA. If Licensee fails either to pay any payment required under this Agreement, including timely payments to Contractors for Make-Ready Work, or timely perform any material obligation under this Agreement, and if such default has not been cured within ninety (90) days of Licensee's receipt of written notice of default, COA may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from Traffic Poles. All such Attachments shall be removed within thirty (30) days after the date of the notice of termination, or within such time as COA may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by COA of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this Agreement or Licensee's Attachment Licenses hereunder. If in the director's sole discretion and determination, Licensee's default is isolated to an Attachment License, COA may terminate the Attachment License allowing for notice and cure in accordance with this paragraph.

6.3 Failure to Remove Attachments. If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by COA in writing, then COA may remove Licensee's Attachments at Licensee's sole Cost and risk, in which event Licensee shall pay to COA as liquidated damages, and not as a penalty, for the use and occupancy of Traffic Poles a sum equal to one-half of the monthly Usage Rate for each Traffic Pole Contact for each month (or part thereof) until all such Attachments have been removed. Alternatively, COA may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.



6.4 Termination of Agreement by Licensee. Licensee may terminate this Agreement or an Attachment License upon sixty (60) days written notice to COA, in which event all Attachments shall be removed within one hundred twenty (120) days after the date of the notice of termination or within such other time as COA agrees. Until all of Licensee's Traffic Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums owing COA.

6.5 Survival. Licensee's obligations under this Article shall survive termination of this Agreement.

#### Article 7 **Assignments**

7.1 Permissible Assignments. Licensee may not assign or otherwise transfer this Agreement or any Attachment Licenses without COA's prior written consent, except that Licensee may without consent:

- A. transfer or assign this Agreement to an affiliate or subsidiary of Licensee. Licensee's rights and obligations hereunder shall pass to such successor only upon receipt by COA of written notice of such transfer or assignment, together with true copies of the documents specified in paragraph 7.2 below; and
- B. mortgage any or all of its property, rights, privileges and franchises, or to enter into any merger, consolidation, or sale of its assets in the City of Austin substantially in their entirety. Licensee shall provide advance written notice of foreclosure, merger, consolidation or sale, together with true copies of the documents specified in paragraph 7.2 below within thirty (30) days of closing such transaction.

7.2 Information to COA. In the event of a transfer or assignment of this Agreement, Licensee shall provide COA with true and complete copies of the transfer or assignment documents; documents showing the ownership of the assignee and its relationship to Licensee, if any; a copy of the assignee's most current audited annual financial statement (or unaudited financial statement if an audited annual financial statement has not been prepared); a copy of the assignee's franchise with the City, if any; copies of all insurance certificates and bonds required by this Agreement; and such other information as COA may reasonably request.

7.3 Other Assignments Void. A purported assignment or transfer made in violation of the provisions of this Article 7 shall not be binding upon COA and shall be deemed to be a material default of this Agreement.

7.4 Assignment by COA. COA may assign this Agreement in whole or in part without the consent of Licensee. COA shall give Licensee written notice of the transaction within ten (10) days after closing.

7.5 Partial Assignments. If Licensee sells, conveys, or transfers some, but not all, of Licensee's Attachments, and such assignment complies with this Article 7, the assignee must nonetheless obtain a separate agreement from COA for the assignee's Attachments in accordance with City of Austin and COA policies, rules, regulations and Ordinances in effect at that time. Until the assignee executes a separate agreement, the assignment is not binding upon COA and the assignee's Attachments shall continue to be deemed to be the Attachments of Licensee for all purposes hereunder, including billing and payment of Annual Usage Charges.

#### Article 8 **Liability and Indemnity; Warranty**

8.1 COA Liability. COA reserves to itself the right to maintain and operate its Traffic Poles in such manner as will best enable it to fulfill public safety requirements, subject in all respects to the terms and conditions of this Agreement. COA shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the negligence or intentional misconduct of COA; provided, however, that COA shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's Attachments. NEITHER COA NOR

LICENSEE shall be liable to THE OTHER for any special, indirect, punitive, or consequential damages arising in connection with the use of or damage to COA's or licensee's facilities.

8.2 No Warranties by COA. Licensee is expected to inspect the Traffic Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Traffic Poles for its purposes. COA does not make, and hereby expressly disclaims, any express or implied warranties concerning any Traffic Pole, including without limitation the warranties of merchantability or fitness for a particular purpose. Licensee accepts the use of all Traffic Poles AS IS, WHERE IS, and WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED HEREIN.

8.3 Unsafe Traffic Poles. Licensee acknowledges and agrees that COA does not warrant the condition or safety of Traffic Poles, or the premises surrounding the Traffic Poles, and LICENSEE HEREBY ASSUMES ALL RISKS OF AND INDEMNIFIES COA FROM ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH LICENSEE'S OR LICENSEE'S CONTRACTORS' USE OF THE TRAFFIC POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE TRAFFIC POLES. Licensee expressly agrees that it will undertake responsibility for inspecting and evaluating the condition of any Traffic Pole before allowing any workers, whether those of Licensee or Licensee's Contractors, to work on such Traffic Pole. If Licensee discovers any Traffic Poles that are unsafe for Attachment installation, Licensee shall immediately report such unsafe condition to COA. Licensee further acknowledges that COA does not warrant that all Traffic Poles are properly labeled, and agrees that COA is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Traffic Pole. Licensee further agrees to immediately notify COA if labels or tags are missing or otherwise improper.

8.4 Dangerous Nature of the Work. Licensee acknowledges that in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, and Contractors will work within the public right-of-way and on Traffic Poles with existing energized equipment. Licensee shall ensure that its employees, servants, agents, and Contractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of COA, and the general public, from harm or injury while performing work permitted by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents and Contractors to furnish their employees, with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee further warrants that it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH) inherent in the work necessary to make installations on Traffic Poles by Licensee's employees, servants, agents, and Contractors, and accepts it as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents and Contractors to inform their employees, of such dangers, and to keep them informed regarding same.

8.5 Licensee Liability and Indemnity. Subject only to paragraph 8.7, Licensee shall defend, indemnify and hold harmless COA and all affiliated entities of COA, whether existing now or in the future, and their respective officials, officers, departments, agencies, boards, representatives, employees, agents, Contractors and attorneys against any and all liability, claims, costs, damages, fines, taxes, penalties, punitive damages, expenses, demands, lawsuits or disputes (including reasonable attorney fees of counsel selected by COA and all other costs and expenses of litigation) arising from or related to any of the following:

- A. All acts or omissions by Licensee or its Contractors done in the course of Make-Ready or installation construction or in the maintenance, use, or operation of Licensee's Attachments;
- B. Any work performed by COA that was necessitated by the installation, maintenance, presence, use or removal of Licensee's Attachments or from any work this Agreement authorizes COA to perform on Licensee's behalf;
- C. All claims or causes of action for damage to property or injury to or death of any persons, including payments made by COA under any Worker's Compensation Laws or under any plan for employees' disability and death benefits, arising out of the erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Attachments or the proximity of

Licensee's Attachments to COA's facilities or the property of any other Third Party User, or by any act or omission of Licensee on or in the vicinity of Traffic Poles;

- D. All claims or causes of action for property damage, bodily injury or death arising out of the performance or nonperformance of any work or obligation undertaken by Licensee pursuant to this Agreement;
- E. Any claim or cause of action related to Licensee's erection, maintenance, repair, presence, use, relocation, transfer or removal of Licensee's Attachments, including liabilities incurred as a result of violation of any law, rule, or regulation of the United States, State of Texas or any other governmental entity or administrative agency;
- F. A violation of any state or federal law arising out of Licensee's erection, maintenance, repair, presence or use, relocation, transfer or removal of Licensee's Attachments or the proximity of Licensee's Attachments to COA's facilities or the property of any Third Party User, or by any act or omission of Licensee on or in the vicinity of Traffic Poles, whether such violation is the result of a violation of a statute by COA or the Licensee solely or any joint violation thereof;
- G. Claims of governmental bodies, property owners or others alleging that Licensee does not have a sufficient right or authority for placing and maintaining Licensee's facilities at the locations of Traffic Poles;
- H. Claims for taxes by others that arise directly or indirectly from the construction, maintenance or operation of Licensee's facilities;
- I. Claims or causes of action caused by or relating in any manner to a breach of this Agreement or a failure to follow the terms of this Agreement by Licensee or its agents and employees or by Licensee's contractors or their agents and employees;
- J. All claims or causes of action of Third Party Users alleging interference from Licensee's Attachments or damage to Third Party User Attachments or facilities;
- K. Any third party claims or causes of action alleging that Licensee's use of any hardware, software or other materials embedded in Licensee's Attachments infringes or misappropriates such third party's intellectual property rights in such hardware, software or other materials.

8.6 COA Fault. SUBJECT ONLY TO PARAGRAPH 8.7, It is the express intent of the parties that the foregoing indemnity is to protect AND INDEMNIFY COA against the consequences of its own fault where COA's fault is a concurrent cause of the indemnified liability.

8.7 Joint Liability. The indemnity obligations set forth in paragraph 8.5 shall apply to fully protect and indemnify COA from all such claimed damages unless the indemnified liability was the result of intentional or reckless misconduct or negligence on the part of COA, or their agents, servants, employees, or contractors, in which case each party shall be liable for its found percentage of damages in accordance with Texas law based upon a final judgment in which a finder of fact determines COA's percentage of responsibility for the indemnified liability.

8.8 Other Indemnification Provisions. No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

8.9 Licensee's Construction Warranty. Licensee warrants and guarantees to COA that all Make-Ready work will conform to the COA's utility criteria manual and transportation criteria manual and the Design Documents, be performed in a good and workmanlike manner in accordance with this Agreement, and will not be defective. Licensee's warranty and guarantee hereunder excludes defects or damage caused by: (i) abuse, modification or improper maintenance or operation by persons other than Licensee, its subcontractors or suppliers; or (ii) normal wear and tear under normal usage.

8.10 Survival. This Article 8 shall survive the termination of this Agreement.

Article 9  
**Insurance**

9.1 Insurance Required. Licensee, and all Contractors of Licensee performing work on a Traffic Pole, shall at all times carry insurance issued by companies duly licensed to provide insurance in the State of Texas and approved by the director to protect Licensee (or its contractor) and the City of Austin against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Section.

9.2. Minimum Coverages. At a minimum, Licensee and its contractors shall carry and maintain the following coverages and shall furnish the City Risk Manager certificates of insurance as evidence thereof:

- A. Commercial General Liability coverage in the minimum amount of \$2,000,000 per occurrence;
- B. Worker's Compensation coverage with statutory benefits as set forth in the Texas Worker's Compensation Act and Employer's Liability coverage of not less than \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per disease and \$1,000,000 per disease per employee;
- C. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.

9.3 City as Additional Insured. The Commercial General Liability and Business Automobile Liability Policies shall name the City of Austin as an additional insured as its interest may appear. The City's risk manager will be included as a party to be notified under the policy at least thirty (30) days before any non-renewal, cancellation or material change in coverage in accordance with the terms of such policy. The "other insurance" clause shall not apply to the City; it being the intention of the parties that the above policies covering Licensee and the City shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against the City, its officers, agents, employees, and elected officials.

## Article 10 Miscellaneous Provisions

10.1 Integration. This Agreement constitutes the entire understanding of the parties relating to the use of Traffic Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

10.2 No Waiver. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.

10.3 Applicable Law. The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions. The parties further agree and intend that venue shall be proper and shall lie exclusively in Travis County, Texas, except where otherwise provided herein.

10.4 Severability. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Agreement shall remain in full force and effect.

10.5 Payments and Interest. All monetary payments under this Agreement shall be due and payable within forty-five (45) days after receipt of invoice. All overdue balances shall accrue interest at the rate of onepercent (1%) per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

10.6 Notices. When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

**City**

Austin  
3701  
Austin,  
Phone  
Fax  
Attn: Asst. Director,

Lake Transportation Austin  
TX

Department  
Boulevard  
78703  
(512)  
(512)

**Licensee**

*[Contact Information]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement through their duly authorized representatives.

**LICENSEE:**

***[Name]***

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**CITY OF AUSTIN**

**BY ITS TRANSPORTATION DEPARTMENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

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