

## CONCEALED NETWORK NODE DEPLOYMENT AGREEMENT

This Agreement is entered into pursuant to Section 284.056, Section 284.201, and Section 284.301 of the Texas Local Government Code, this \_\_\_\_\_ day of \_\_\_\_\_ 2020 (“**Effective Date**”), by and between the City of Hilshire Village, (the “**City**”) and GTE Mobilnet of South Texas, LP d/b/a Verizon Wireless (“**Network Provider**”).

**WHEREAS**, Network Provider is a wireless telecommunications Network Provider as that term is defined in Section 284.002 of the Texas Local Government Code (“**Chapter 284**”); and

**WHEREAS**, the majority of City rights-of-way are located in design districts with decorative poles, in municipal parks, and/or adjacent to residential streets not more than 50 feet wide;

**WHEREAS**, the City desires to facilitate deployment of Network Nodes and related equipment in a manner that minimizes the impact on adjacent property owners and users of City rights-of-way; and

**WHEREAS**, a Network Provider may choose to enter into an agreement with the City to obtain advance approval of the locations, specifications and concealment measures for a uniform deployment of multiple Network Nodes within the City;

**WHEREAS**, pursuant to Chapter 284, the City offers this same agreement to any and all Network Providers desiring to install Network Nodes on existing utility poles or on streetlights with concealed Network Nodes and associated equipment in locations where City Poles are installed or planned to be installed in order to streamline the permitting, land use approval and registration processes; and

**WHEREAS**, Network Provider and the City desire to enter into this Agreement to secure authority from the City for Network Provider to install certain Network Nodes, as that term is defined in Chapter 284, and related equipment in the City’s rights-of-way, subject to the City’s Right-of-Way Management Ordinance and the terms and conditions of this Agreement;

**NOW, THEREFORE**, Network Provider and the City mutually agree as follows:

1. **Definitions.** Unless expressly provided otherwise, all terms used in this Agreement that are expressly defined in Chapter 284 and the City’s Right-of-Way Management Ordinance shall have the same meaning in this Agreement, including but not limited to: Service Poles, Network Node, Network Node Support Poles, Antenna, and Transport Facility. Terms defined in the recitals, above, shall have the meanings provided in the recitals.

- a. “**Approved Node**” means Network Nodes, Network Node Support Poles, Network Provider Poles, ground equipment, Antennas, and any other equipment associated with operation of a Network Node expressly authorized under this Agreement and installed or

caused to be installed by Network Provider, including but not limited to any Network Nodes collocated on utility poles.

- b. **“Network Provider”** means GTE Mobilnet of South Texas, LP, its parent company, subsidiaries, affiliates, contractors, agents, subcontractors, successors, assigns, and any other party performing work on an Approved Node.
- c. **“Network Provider Pole”** means a Pole that is also a Node Support Pole containing a concealed Network Node and concealed Network Node equipment, including but not limited to the Antenna and ground equipment, constructed in accordance with the specifications attached as Exhibit B-2, and located in an approved location, as shown on Exhibit A.

2. License granted. The City hereby grants Network Provider a nonexclusive right to construct and install Network Provider Poles in the approved locations, as shown in Exhibit A, attached and incorporated by reference for all purposes, for purposes of deploying Approved Nodes and related equipment under the terms of this Agreement.

3. Term. The primary term of this Agreement shall be ten (10) years commencing upon the effective date first set forth above. This Agreement may be renewed for additional five (5) year terms upon mutual written approval of the Parties. Following expiration or termination of this Agreement, Approved Nodes that remain in the public right-of-way shall require annual registration in accordance with the City’s Right-of-Way Management Ordinance on the earlier of: (i) the first anniversary of the Effective Date of this agreement following termination or expiration, or (ii) the first date that registration is required under the City’s Right-of-Way Management Ordinance.

4. Consideration. In consideration for streamlined permit processing, waiver of certain construction permit fees, pre-approval of concealment measures, and other good and valuable consideration the sufficiency of which is hereby acknowledged, Network Provider agrees to pay the City the fees required by this Agreement and to construct, install and maintain the Approved Nodes in accordance with the terms of this Agreement, notwithstanding any limitation on the regulatory conditions that may be imposed by the City under Chapter 284. The following fees shall apply to the Approved Nodes:

- a. Application Fee for Network Node Deployment Agreement: \$1,000, one time fee covering all Approved Nodes authorized under this Agreement (This fee is in lieu of construction permits for all Approved Nodes, including Network Provider Poles), due within sixty (60) days of the Effective date of this Agreement;
- b. Annual public right-of-way fee: \$250 per Approved Node, located in the public right-of-way, per year, due each year on or before each anniversary of the Effective Date of this Agreement;
- c. Fiber line fee: \$28 per Approved Node per month for the associated Transport Facility, as such term is defined by Chapter 284, due each year on or before each anniversary of the Effective Date of this Agreement (this amount shall be reduced by the amount if any, of municipal fees paid by the transport Network Provider for right-of-way access under Chapter 283 of the Texas Local Government Code);

These fees shall apply only to Approved Nodes. All other Network Nodes that are not Approved Nodes under this Agreement or a substantially similar agreement shall be subject to the fees required under the City's Right-of-Way Management Ordinance and applicable law.

5. Requirements Prior to Construction. At least ten (10) days prior to construction or installation of any Approved Network Node, Network Provider shall submit or cause to be submitted an application form to the City in order to provide all necessary information for City records. Further, prior to blocking any street, cutting pavement, beginning construction or maintenance, installing a network node or pole, or any equipment associated with such network node or pole, Network Provider shall require on-site personnel, including any subcontractor, to: (1) contact the City Administrator by telephone at 713-973-1779 or email at [susan.blevins@hilshirevillagetexas.com](mailto:susan.blevins@hilshirevillagetexas.com) and provide the approximate start date, end date, brief description of work, and any anticipated impact on vehicle or pedestrian traffic; and (2) maintain on their person during work within the City a copy of this Agreement or the applicable permit for any network node or pole not provided for in this Agreement. Network Provider acknowledges that all construction work requiring a permit within the City requires a copy of the permit to be maintained on site. Further, Network Provider acknowledges that failure to comply with City regulations is a violation of law that may result in a citation being issued by the Village Police Department.

6. Approved Node Specifications. Approved Nodes (including new poles, antenna and associated equipment for Approved Nodes) shall be installed, constructed and maintained in compliance with the plans and specifications, including the specific concealment measures, attached as Exhibit B (including Exhibit B-1 and Exhibit B-2) and incorporated by reference for all purposes. The City Administrator is authorized to allow modifications in the height of Approved Nodes upon written request from Network Provider; provided, however, no pole installed under this Agreement for an Approved Node shall be taller than thirty-five (35) feet and no Network Node, antenna or other equipment for an Approved Node installed under this Agreement shall be located more than thirty-five (35) feet above the ground except when collocating on utility poles. Further, the City Administrator is authorized to allow modifications in the paint color or concealment measures; provided a written request is submitted in writing by Network Provider prior to installation or construction of the Network Node that includes updated pictures and specifications of the proposed concealment measures for the Network Node, and detailed justification for the request. The Network Provider shall provide a copy of the written request to the owners of the immediately adjacent property. Network Provider acknowledges that pre-approval of the Approved Node specifications and concealment measures is an essential term of the Agreement and that the City would not have entered into this Agreement without the authority to approve these requirements for all Approved Nodes in advance of a Network Node deployment in a manner that minimizes the impact of the Approved Nodes on the surrounding property owners and users of the City's rights-of-way and allows for public input on this Agreement at a City Council meeting. Further, each Approved Node shall comply with the National Electric Code and any other requirements of Chapter 284.

7. Approved Node Locations. Approved Nodes shall be located within five (5) feet of the location shown in Exhibit A, attached and incorporated by reference for all purposes. The City Administrator is authorized to allow modifications in the location of an Approved Node of up to

an additional three (3) feet; provided a written request is submitted in writing by Network Provider prior to installation or construction of the Network Node and includes an updated map showing the proposed location of the Network Node, any changes to the Network Node or pole specifications and concealment measures, and detailed justification for the request. Network Provider acknowledges that pre-approval of the Approved Node locations is an essential term of the Agreement and that the City would not have entered into this Agreement without the authority to approve the specific location of all Approved Nodes in a Network Node deployment in advance in a manner that minimizes the impact of the Approved Nodes on the surrounding property owners and users of the City's rights-of-way and allows for public input on this Agreement at a City Council meeting.

8. Duplicate Locations. In the event that the Network Provider desires to install a Network Node in the same location as any existing Network Node, or at a location that is within 100 feet of any existing Network Node or any Approved Node that has not yet been constructed, the Network Provider shall do one of the following:

- a) submit a request to the City to amend Exhibit A to show an alternate location for the Network Node that is at least 100 feet from any existing Network Node or any Approved Node that has not yet been constructed, whether owned by the same Provider or not;
- b) collocate on the same Pole as the existing Network Node in cooperation with the Provider of the existing Network Node and/or Pole owner; or
- c) submit a written request to the City in the form of a Network Node Support Pole application including: (i) a visual representation of the existing location with the proposed Approved Node and/or Network Provider Pole installed, (ii) the Provider's explanation of how the proposed installation will promote uniformity of Network Node deployment within the City, minimize the visual impact on adjacent residents, and avoid interference with users of the City's Rights-of-Way, and (iii) the Provider's justification for not collocating on an existing Pole.

9. Network Provider's Maintenance Obligations. Network Provider shall own, maintain, repair, replace, modify, and operate its Network Nodes, Network Provider Poles and related equipment at its sole expense and responsibility. To facilitate Network Provider's undertaking hereunder, City grants to Network Provider a non-exclusive, non-transferable right of access to Network Provider Poles to operate and maintain the Network Nodes, Network Provider Poles and related equipment, subject to the requirements of the City's Right-of-Way Management Ordinance.

10. Removal and Relocation of Nodes. Network Provider shall relocate its Network Nodes at its own expense to an alternative location made available by the City, and acceptable to Network Provider, not later than one hundred eighty (180) days after receiving written notice from the City that removal or relocation of the Network Provider Pole is necessary due to construction, expansion, repair, relocation, or maintenance of a street or other public improvement project.

11. Amendment of Approved Nodes. Network Provider is authorized to request amendments to Exhibits A and B, including requests to delete Approved Node locations, where no Nodes were constructed at those locations or where Nodes have been removed, and to add additional

Approved Node locations, at any time during the Term of this Agreement; provided, however, City Council approval shall be required for these amendments except where an additional Approved Node complies with the specification and concealment measures in Exhibit B and is proposed at a location that the City Administrator has approved and to which no adjacent property owner has objected.

12. Termination. This Agreement may be terminated prior to the expiration of its term by either Party upon written notice to the other Party, if such other Party materially breaches any provision of this Agreement and the breach is not cured within sixty (60) days after receipt of such notice of the breach from the non-breaching Party, or, if the breach cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within such time and diligently pursue the cure to completion.

13. Non-compliance of Approved Nodes. In the event any Approved Node installed in the City is found to be non-compliant with the terms of this Agreement or the City's Right-of-Way Management Ordinance, the City shall provide notice of such noncompliance to Network Provider in accordance with this Agreement and Network Provider shall correct such noncompliance within 30 days or respond to the City in writing with an estimate of the time required to complete any work necessary to correct the noticed violation. Failure to correct the noticed violation(s) within 30 days from the date of the notice may result in a citation issued by law enforcement to Network Provider or other action by the City pursuant to the City's Right-of-Way Management Ordinance.

14. Collocation. Collocation on City Service Poles, to the extent such poles exist, is not authorized under this Agreement. This section is not intended to prevent collocation of the utility poles.

15. No Interference with Network Nodes. Network Provider acknowledges that it has received and reviewed the Right-of-Way Management Ordinance and that this Agreement does not waive any City Code requirements except the requirement to apply for a construction permit and land use approval under the City's Right-of-Way Management Ordinance for Approved Nodes. Pursuant to Section 284.301 of the Texas Local Government Code, Network Provider agrees that none of the provisions in this Agreement materially interfere with the use of Network Provider's Network Nodes.

16. Governmental Immunity; Limitation on Liability. This Agreement serves in lieu of certain permits and land use approvals that would otherwise be issued by the City and Network Provider agrees and acknowledges that this Agreement does not impose any liability on the City, its officers, employees or agents, for any damage to any equipment or other property owned, installed or maintained by Network Provider pursuant to this Agreement. Nothing in this Agreement is intended to waive any governmental immunity to which the City is entitled.

17. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Texas and applicable federal laws. Venue shall lie exclusively in Harris County, Texas.

18. No Waiver. None of the material provisions of this Agreement may be waived or modified except expressly in writing signed by Network Provider and the City. Failure of either Party to require the performance of any term in this Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be construed or deemed a waiver of any subsequent breach.

19. Notices. Notices required by this Agreement may be given by certified mail by depositing the same in the United States mail or with a commercial courier. Either Party shall have the right by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

If to the City:

City of Hilshire Village  
8301 Westview Drive  
Houston, TX 77055  
Attn: City Administrator

With a copy to:

Olson & Olson  
2727 Allen Pkwy, Ste 600  
Houston, TX 77019  
Attn: Scott Bounds

If to Network Provider:

GTE MOBILNET SOUTH TEXAS LP  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

With a copy to:

GTE MOBILNET SOUTH TEXAS LP  
d/b/a Verizon Wireless  
600 Hidden Ridge  
Irving, TX 75038  
Attention: Legal Department

Notices shall be deemed effective upon delivery or refusal of delivery.

20. Counterparts and Electronic Copies. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument. A scanned or electronically reproduced copy of this fully executed Agreement shall have the same legal effect as an original signed version of this Agreement.

21. Severability. If one or more provision in this Agreement is found to be invalid, illegal or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect. If any provision in this Agreement is found to be invalid, illegal or otherwise unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally intended by the Parties.

22. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, and shall not be modified

except by an express written agreement signed by a duly authorized representative of both Parties.

23. Force Majeure. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control, including, but not limited to, acts of God.

24. Exhibits. All exhibits to this Agreement are hereby made a part hereof as if fully set out herein.

25. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties relating to this Agreement.

26. Authority to Execute. Any individual executing this Agreement on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms.

27. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any benefit or right upon any third party. This Agreement is for the sole benefit of, and may be enforced only by, the Parties to this Agreement. No other third party shall have standing to enforce any provision of this Agreement.

28. Remedies. In the event of any breach of the terms of this Agreement by the either Party, the non-breaching Party shall be entitled to pursue any and all legal and equitable rights and remedies permitted by applicable law.

29. Amendments. Subject to minor modifications by the City Administrator expressly authorized under this Agreement, this Agreement can only be amended by mutual written agreement of the Parties following approval of such amendment by City Council.

30. Assignment. Network Provider may, upon 30 days advance written notice to the City, assign or transfer its rights arising under this Agreement, provided such assignment requires the assignee to assume all the duties and obligations of Network Provider under this Agreement, to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with Network Provider, (ii) shall merge or consolidate with or into Network Provider, (iii) shall succeed to all or substantially all the assets, property and business of Network Provider to which this Agreement relate, or (iv) any affiliate or subsidiary or other party as may be required in connection with any offering, merger, acquisition, recognized security exchange or financing. Under all other circumstances, such assignment or transfer shall require the City's written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

31. Relationship of the Parties. Each Party shall be considered an independent contractor, and no party nor any affiliate of any party shall be considered the agent, partner, fiduciary or

employee of any other party, in its performance of any and all duties under any transactions contemplated by this Agreement. No party shall be deemed to have any fiduciary relationship to any other party.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have executed, or caused their respective duly authorized representatives to execute, this Agreement as of the day and year listed below.

CITY of HILSHIRE VILLAGE

\_\_\_\_\_  
Russell Herron, Mayor

ATTEST:

\_\_\_\_\_  
Susan Blevins, City Secretary

NETWORK PROVIDER

\_\_\_\_\_  
GTE Mobilnet of South Texas, LP  
By:  
Title:

**Exhibit A – Approved Node Location Listing and Map**

**Exhibit B – Approved Node Specifications and Concealment Measures**

**B-1: specifications for nodes collocated on utility poles**

**B-2: specifications for Network Provider Poles, including network nodes**