

STANDARD UTILITY AGREEMENT ACTUAL COST

Limits of Project: Belt Line Road from Marsh Lane to Midway Road

This Agreement by and between the Town of Addison, ("**Town**"), and Time Warner Cable, Inc., acting by and through its duly authorized representative, ("**Utility**"), shall be effective on the date of approval and execution by and on behalf of the **Town**.

WHEREAS, the **Town** has determined that it is necessary to make certain roadway and utility improvements in the public roadway system, which said changes are generally described herein,

WHEREAS, these proposed roadway and utility improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of **Utility** as indicated in the following statement of work: Relocation of aerial utilities (**Utilities**) to underground along Belt Line Road from Marsh Lane to Midway Road and such work is shown in more detail in **Utility's** plans, specifications and estimated costs, which are attached hereto as Attachment "A".

WHEREAS, the **Town** will participate in the costs of the adjustments, removal, and/or relocation of the **Utilities** to the extent they are Actual Cost, as provided herein.

WHEREAS, the **Town**, upon receipt of evidence it deems sufficient, acknowledges **Utility's** interest in the **Utilities** that entitle it to reimbursement for the adjustment, removal, and relocation of the **Utility** located upon the lands as indicated in the statement of work above, minus the amount that is considered a Betterment as described and calculated in Attachment "D".

NOW, THEREFORE, BE IT AGREED:

The **Town** will pay to **Utility** the costs incurred by **Utility** in adjustment, removal, and/or relocation of **Utility's** facilities (the **Utilities**) up to the amount of Actual Cost, as provided herein. Those costs, as outlined in Attachment D; NTX Contract Labor Estimate, are calculated to be \$322,864. Of those costs, \$122,240 is considered to be a betterment and will be paid for by the **Utility**. The **Town** will reimburse the **Utility** an amount not to exceed \$200,624.

The **Town** and **Utility** agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the **Utilities** facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with 23 CFR 645, Subparts A & B, as highlighted, and all other applicable federal and State laws, rules and regulations. **Utility** agrees to supply, upon request by the **Town**, proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by **Town**, or may, with the **Town's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by **Utility** (Actual Cost). Bills for work hereunder will be submitted to **Town** not later than 90 days after completion of work.

When requested, the **Town** will make intermediate payments at not less than monthly intervals to **Utility** when properly billed and such payments will not exceed eighty percent (80%) of the Actual Cost as

shown in each such billing. In addition, the **Town** will make a payment, before audit, which will bring the total percentage paid to the **Utility** up to ninety percent (90%) Actual Costs. Intermediate payments shall not be considered final payment for any listed items.

Alternatively, **Town** agrees to pay **Utility** an agreed lump sum as supported by the attached estimated costs. The **Town** will, upon satisfactory completion of the adjustments, removals, and/or relocations and upon receipt of a final billing, make payment to **Utility** in the agreed amount.

Upon execution of this agreement by both parties, the **Town** will, by written notice, authorize the **Utility** to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or another act of God, sabotage, or other events, interference by the **Town** or any other party with **Utility's** ability to proceed with the relocation, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of **Utility**.

The **Town** will, upon satisfactory completion of the relocation or adjustment and upon receipt of final billing prepared in an approved form and manner, make payment in the amount of ninety percent (90%) of the Actual Costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount reasonable found by the Town to be Actual Cost.

Unless an item is stricken and initialed by the **Town** and **Utility**, this agreement in its entirety consists of the following:

1. This Standard Utility Agreement;
2. Plans, Specifications, and Estimates Costs (Attachment "A");
3. Utility's Accounting Method (Attachment "B");
4. Utility's Schedule of Work and Estimated Date of Completion (Attachment "C");
5. Betterment Calculation and Estimates (Attachment "D");
6. 23 CFR 645, Subpart A, highlighted (Attachment "E")

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **Town** and **Utility**.

This agreement is subject to cancellation by the **Town** at any time up to the date that work under this agreement has been authorized by the Town. Such cancellation will not create any liability on the part of the **Town**.

The **Town** Auditor (or Director of Finance or the Director's designee) ("Auditor") may conduct an audit or investigation of any entity receiving funds from the **Town** directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the **Town** Auditor, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the **Town** Auditor with access to any information the **Town** Auditor considers relevant to the investigation or audit.

Neither the **Town** nor the **Utility**, by execution of this agreement, waive any rights which either of them may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, or relocation at its own risk, and that the **Utility** agrees to defend, indemnify and hold the **Town**, and its elected and appointed officials, and its officers, employees, representative, and agents, harmless for damage to existing facilities or personal injuries (including death) caused by or resulting from the **Utility's** conduct.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

TOWN OF ADDISON, TEXAS

UTILITY

Name, Title

Acting by and through the authority of the Town
of Addison Council

Attest:

Title

Approved as to Form:

Title

Time Warner Cable, Inc.

Name of Utility

By: _____
(Authorized Signature)

Print or Typed Name

Title: _____

Date: _____

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of the Town of Addison under this contract.

Town of Addison Auditor