

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A STANDARD UTILITY AGREEMENT BETWEEN THE TOWN OF ADDISON AND SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T TEXAS FOR ROADWAY AND UTILITY IMPROVEMENTS IN THE PUBLIC ROADWAY SYSTEM ON BELT LINE ROAD FROM MARSH LANE TO MIDWAY ROAD, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Standard Utility Agreement between the Town of Addison and Southwestern Bell Telephone Company d/b/a AT&T Texas for roadway and utility improvements in the public roadway system on Belt Line Road from Marsh Lane to Midway Road, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 11th day of August, 2015.

Todd Meier, Mayor

ATTEST:

By: _____
Chelsea Gonzalez, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

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, Texas ("**Town**"), and acting by and through the Town Council, and Southwestern Bell Telephone Company d/b/a AT&T Texas., 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 as follows: undergrounding of all overhead utilities on Belt Line Road.

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 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" ("statement of work"). Town of Addison agrees to contract and compensate for the construction of the facility; obtaining PVC and handholes from an AT&T approved vendor and the pulling of the cable; Inspection Services of Owners utilities and proposed adjustments. AT&T agrees to provide the design of said relocations, materials, and splicing/service connections with reimbursement from Town of Addison.

WHEREAS, the **Town** will participate in the costs of the adjustments, removal, and/or relocation of certain facilities as described above in the statement of work to the extent as may be eligible for State and/or Federal participation.

WHEREAS, the **Town**, upon receipt of evidence it deems sufficient, acknowledge **Utility's** interest in certain lands and/or facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities as described above in the statement of work located upon the lands as indicated in the statement of work above.

NOW, THEREFORE, BE IT AGREED:

The **Town** will pay to **Utility** the costs incurred in adjustment, removal, and/or relocation of **Utility's** facilities as described above in the statement of work up to the amount of Actual Cost, as provided herein.

The **Utility** agrees that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the 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 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** hereby requests and the **Town** hereby agrees to retain an approved AT&T Contractor ("Contractor") to perform the Construction necessary to include the adjustment, removal and/ or relocation of **Utility's** facilities including abandonment, removals and/or retirements and hereby agrees to perform such construction, with the exception of splicing work performed by the **Utility**. All construction work

hereunder shall be performed by the Contractor in a good and workmanlike manner, and in accordance with the Plans, the standard specifications, standards of practice, and construction methods, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4231, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and with the Utility Accommodation provisions of 23 CFR 645, Subpart B., (collectively, "Standards") which the **Utility** customarily applies. Contractor shall supply all Handholes, SCH 40 PVC, and Innerduct. AT&T shall supply all cable materials to the Contractor.

Throughout the adjustment construction, the **Town** shall retain and provide AT&T approved inspectors for such construction, and the construction work shall be inspected as necessary for prudent installation.

The **Utility** shall accept construction if it is consistent with the performance standards by giving written notice of such acceptance to the **Town**. The **Utility** agrees to develop relocation or adjustment costs for the work described above in the statement of work 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**. 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 eligible cost as shown in each such billing. In addition, if intermediate payments are made, the **Town** will make a payment, before audit, which will bring the total percentage paid to the **Utility** up to ninety percent (90%) eligible costs. Intermediate payments shall not be considered final payment for any listed items.

Alternatively, at the Town's option, **Town** agrees to pay **Utility** an agreed lump sum as \$N/A 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 at the time deemed appropriate by the Town, 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 work as described above in the statement of work and upon receipt of final billing prepared in an approved form and manner, make payment in the amount of ninety percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for county reimbursement.

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 (Actual Cost);

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 there is a change from the statement of work contained in this agreement is required, reimbursement therefor 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 Town. Such cancellation will not create any liability on the part of the **Town**. However, the Town will review and reimburse the Utility for eligible costs incurred by the Utility in preparation of this agreement. Upon such cancellation, the parties shall negotiate in good faith an amendment to this agreement that shall provide mutually acceptable terms and conditions for resolving unfinished construction work in a quick and efficient manner so as not to affect public convenience, safety and welfare.

The **Town** 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 contract. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the **Town**, 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** with access to any information the **Town** considers relevant to the investigation or audit.

Neither the **Utility** nor the Town, by execution of this agreement, waives any rights or remedies to which **Utility** or Town, as applicable, may have within the limits of the law, in equity, or otherwise.

It is expressly understood that the **Utility** is an independent contractor and conducts the adjustment, removal, or relocation work as described above in the statement of work at its own risk, and that the **TOWN makes no warranties or representations regarding the existence or location of utilities or other property currently within its rights of way.** .

Notwithstanding any other provision of this agreement, nothing in this agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which Town, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

This agreement represents the entire and integrated agreement between Utility and Town with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of Utility and Town.

This agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose.

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

Charles Daniels, Interim City Manager
Acting by and through the authority of the Town
of Addison Council

Attest:

Chelsea Gonzalez, City Secretary
Approved as to Form:

Brenda N. McDonald

UTILITY

Southwestern Bell Telephone Company d/b/a
AT&T Texas

By: _____
(Authorized Signature)

Print or Typed Name

Jarred Whittington

Title: Director-Construction & Engineering

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