

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**FUNDING AGREEMENT WITH
AT&T FOR LIGHT GIG FIBER
NETWORK COORDINATOR**

This Funding Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Southwestern Bell Telephone Company d/b/a AT&T Texas (hereinafter referred to as "Grantee"), a Delaware corporation, acting by and through its officers, hereto duly authorized. City and Grantee are collectively referred to herein as "Parties" and individually referred to as "Party".

RECITALS

WHEREAS, Grantee is expanding its Light Gig Fiber communications Network (hereafter referred to as "Grantee's Network") throughout the City of San Antonio; and

WHEREAS, in order to achieve the expansion of Grantee's Network throughout the City of San Antonio, Grantee must install its fiber lines on City's Rights of Ways; and

WHEREAS, Grantee is legally permitted to install its Network on City Rights of Ways, pursuant to Chapter 283, Texas Local Government Code, and compensates City for such rights, pursuant to this Chapter and the rules established by the Texas Public Utility Commission; and

WHEREAS, as a condition of Grantee working on City property and in order to protect the health, safety and welfare of the public, City requires Grantee to coordinate its installation with City personnel and to have all of Grantee's installation work inspected and approved by City personnel; and

WHEREAS, the Parties concur the prompt coordination and inspection of Grantee's installation work is imperative to the success of Grantee's plans to expand Grantee's Network throughout the City of San Antonio and the provision of Grantee's Light Gig Fiber communications services to City residents; and

WHEREAS, while Grantee is not legally obligated to remit any additional fees, including inspection fees to City in order to install its Network on City Rights of Ways, other than the fees provided pursuant to Chapter 283, Texas Local Government Code, as further established by the Texas Public Utility Commission, Grantee is willing to aid City in facilitating its coordination and inspection of the installation of Grantee's Network; and

WHEREAS, Grantee hereby agrees to fund a position within City's Department of Transportation & Capital Improvements (hereafter referred to as "TCI") dedicated to the coordination and inspection of the installation of Grantee's Network throughout the City of San Antonio (hereafter referred to as "the Coordinator Position"); and

WHEREAS, the initial year cost for a dedicated position within TCI for the coordination and inspection of Grantee's installation efforts in deploying Grantee's Network throughout the City of San Antonio is **ONE HUNDRED SIX THOUSAND DOLLARS AND NO/100 (\$106,000.00)**; and

WHEREAS, through this Funding Agreement, Grantee proposes to fund the Coordinator Position through September 30, 2016, with the option to request and renew said funding on a year-by-year basis (hereafter referred to as "the Term") at the subsequent annual rate more fully described in **Section 3.05** herein; and

WHEREAS, through this Funding Agreement, TCI would interview, hire and train someone for the Coordinator Position as a City employee of TCI on a year-by-year basis, based on Grantee's funding of said Coordinator Position; and

WHEREAS, Grantee's funding of the Coordinator Position shall expire September 30, 2016, unless Grantee's funding of the Coordinator Position is extended, pursuant to **Article II** and **Article IV** herein; and

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. RECITALS

The above Recitals are incorporated herein for all intents and purposes, the same as if they were restated herein in their entirety.

II. TERM

This Agreement shall commence on the later of:

- (a) the effective date of the Authorizing Ordinance; or
- (b) the later of the signatures of the Parties hereto (the "Commencement Date").

The Term shall expire:

- (a) on September 30, 2016, unless extended pursuant to the terms and conditions contained herein; or

(b) upon the termination of this Agreement, as provided herein.

III. GENERAL RESPONSIBILITIES OF GRANTEE

3.01 Provided Grantee provides City the funding described in this **Section 3.01** of this Agreement, and subject to the other terms and conditions of this Agreement, including, but not limited to, force majeure provisions, Grantee hereby accepts full responsibility for the payment of **ONE HUNDRED SIX THOUSAND DOLLARS AND NO/100 (\$106,000.00)** to City within thirty (30) days of the Commencement Date of this Funding Agreement to fund the first year costs of employment of the Coordinator Position within TCI dedicated to the coordination and inspection of the installation of Grantee's Network throughout the City of San Antonio.

3.02 Unless written notification by Grantee to the contrary is received and approved by City, Jeffery Broocks, Director, Construction & Engineering, shall be Grantee's designated representative responsible for the management of this Agreement.

3.03 Communications between City and Grantee shall be directed to the designated representatives of each Party, as set forth in **Section 3.02** and **Section 5.05** herein.

3.04 No later than July 30, 2016, reflecting sixty (60) days prior to the expiration of this Funding Agreement, which currently is scheduled to expire September 30, 2016, and no later than each succeeding July 30th throughout the Term of this Agreement, Grantee shall provide the Director of TCI or his/her designee a written statement stating Grantee's intention and request to fund the Coordinator Position for the coming 12-month period, upon which the Director of TCI or his/her designee will have thirty (30) days to accept Grantee's request to extend the term of this Funding Agreement another twelve (12) month period.

3.05 Grantee hereby accepts full responsibility for notifying City of its intentions to request the funding of the Coordinator Position for any additional years under the terms and conditions of this Funding Agreement. Grantee further accepts, upon its notification to City of Grantee's intention and request again to fund the Coordinator Position for that next 12-month period, all subsequent/future funding of the Coordinator Position shall be provided by Grantee at the projected annual salary of the Coordinator Position plus City's rate of annual benefits, currently projected collectively at **SEVENTY TWO THOUSAND SEVEN HUNDRED DOLLARS AND NO/100 (\$72,700.00)** annually. Grantee shall compensate City no later than sixty (60) days (on or before September 30th of that current year) upon said notification to City of Grantee's request to extend this Funding Agreement for another 12-month period and City agreeing to extend this Funding Agreement.

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

City and Grantee warrant and represent each shall comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance.

V. GENERAL RESPONSIBILITIES OF CITY

5.01 Upon receipt of Grantee's **ONE HUNDRED SIX THOUSAND DOLLARS AND NO/100 (\$106,000.00)**, City/TCI shall interview, hire and train a competent individual to fill the Coordinator Position who shall be dedicated to the utility coordination and inspection of the installation of Grantee's Network, serving as TCI's representative in the coordination and inspection of Grantee's Network throughout the City of San Antonio.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee, for payment of any monies or provision of any goods or services.

5.03 Upon City's hiring of the Coordinator Position, and for each subsequent year the Coordinator Position is funded by Grantee through this Funding agreement, pursuant to Section 3.05 herein, City shall be responsible for all costs of employment associated with employing the Coordinator Position.

5.04 Except as otherwise set forth herein, Grantee further expressly understands and agrees this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

5.05 The Director of TCI or his/her designee shall be responsible for the administration of this Agreement on behalf of the City until the completion of Grantee's obligations under this Agreement.

VI. CONFLICT OF INTEREST

6.01 Grantee covenants neither it nor any member of its governing body or staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

6.02 Grantee further covenants no member of its governing body or staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

6.03 No member of City's governing body or staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement which may affect his/her personal interest or the interest of any corporation, partnership or association in which he/she has a direct or indirect interest;
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

VII. CHANGES AND AMENDMENTS

7.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof only shall be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

7.02 It is understood and agreed by the Parties hereto changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and any such changes shall automatically be incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

VIII. ASSIGNMENTS

Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same or any claim arising thereunder without first procuring the written approval of City, which approval shall not be unreasonably withheld or delayed after construction of the Project is completed. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

IX. SEVERABILITY OF PROVISIONS

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including, but not limited to, the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision never was contained herein; it also is the intention of the Parties hereto in lieu of each clause or provision of this Agreement held to be invalid, illegal, or unenforceable,

there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

X. NON-WAIVER OF PERFORMANCE

10.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

10.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.

10.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the San Antonio City Council.

XI. ENTIRE AGREEMENT

This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

XII. NOTICES

12.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City: Director
Transportation & Capital Improvements Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

and

Grantee: Director
Construction & Engineering
Southwestern Bell d/b/a AT&T Texas
712 E. Huntland Dr.
Austin, Texas 78752

12.02 Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XIV. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XV. TEXAS LAW TO APPLY

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in San Antonio, Bexar County, Texas.

XVI. GENDER

Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this Agreement.

XVIII. DEFAULT

Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same and Grantee shall have thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement. It is expressly agreed neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

XIX. LEGAL AUTHORITY

19.01 Grantee represents, warrants, assures and guarantees it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

19.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

XX. FORCE MAJEURE

If City or Grantee is delayed or prevented from performing any of its respective obligations under this Agreement by reason of strike, labor troubles or any cause whatsoever beyond such Party's reasonable control, the period of such delay or prevention shall be deemed added to the time herein provided for the performance of any such obligation by the delayed Party.

(Signatures appear on the following page)

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this, the _____ day of _____, 20____.

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
City Manager

**SOUTHWESTERN BELL TELEPHONE COMPANY
d/b/a AT&T Texas, GRANTEE**

By: _____
Jeffery Brooks
Director, Construction & Engineering

APPROVED AS TO FORM:

CITY ATTORNEY