

## REIMBURSEMENT AGREEMENT

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between AT&T Corp., on behalf of itself and its affiliated companies, which has a place of business at 3450 Riverwood Parkway, SE, Atlanta, GA 30339 (“AT&T”) and City of Billings, Public Works Department, having an address 2224 Montana Avenue, Billings, MT 59101 (“CITY”).

### WITNESSETH:

**WHEREAS**, AT&T is a grantee of an easement by virtue of an easement granted by Burlington Northern and Santa Fe Railroad Company to install and maintain a buried telecommunications cable system (the “Easement Area”); and

**WHEREAS**, the Easement Area and any AT&T buried cable and associated facilities that have been placed within the Easement Area will be adversely impacted by the CITY’s proposed construction activities within the Easement Area; and

**WHEREAS**, CITY will reimburse AT&T for AT&T’s cost of protecting and/or lowering a section of the **AT&T Glendive, MT to Billings, MT Fiber Optic Cable**, between AT&T cable station numbers 8014+53’ and 8090+34’, near Billings, MT (the “Cable”);

**NOW THEREFORE**, the parties agree as follows:

1. AT&T will provide engineering, plant protection, labor, materials, and supervision necessary to protect and lower existing Cable, as deemed necessary in AT&T’s sole judgment (the “Work”). The Work is more particularly described in attached Exhibit A. The starting date will be set by the parties so that the Work can be completed as expeditiously as practicable.
2. CITY shall pay AT&T the actual cost of the Work, which is estimated to be **Two Hundred Forty One Thousand Nine Hundred Seventy Three Dollars (\$241,973.00)** as shown in the attached Exhibit B. The estimated amount shall be due to AT&T at the execution of this agreement. Upon completion of the Work, AT&T will send a final invoice to CITY for the actual cost of the Work, and if the actual cost is greater than the estimated amount paid, the CITY agrees to pay AT&T the difference within thirty (30) days from the invoice date. If the actual cost of the Work is less than the estimated amount paid, AT&T shall pay the CITY the refund amount within sixty (60) days from the invoice date.
3. CITY agrees to exercise all due caution while working near the Cable, in order to prevent damage to the Cable. CITY agrees:
  - (a) to notify AT&T by telephone at 1-800 252-1133 at least forty-eight (48) hours prior to performing any construction, demolition or repairs at the Cable location;

(b) not to use at the Cable location any tool, equipment, or the machinery capable of being operated within ten (10) feet of the Cable;

(c) to perform construction, demolition, repair, modifications, additions and any other activities in compliance with all applicable laws and regulations and in a manner that does not interfere with the operations of AT&T; and

(d) not to work at the Cable location without AT&T's prior authorization and AT&T's On-Site Work Force personnel being present during the work.

4. CITY (the "Indemnifying Party") shall indemnify, defend and hold harmless AT&T (the "Indemnified Party") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Party because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors. For purposes of indemnifications set forth in this Agreement, "Indemnified Party" means AT&T, its affiliates, subsidiaries, parent, successors and assigns and its and their employees, directors, officers, agents, contractors and subcontractors. The Indemnified Party:

4.1 shall notify the Indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby;

4.2 shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and

4.3 shall reasonably cooperate with the defense.

5. AT&T MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT AS PROVIDED IN SECTION 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING , BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF CUSTOMERS OR OF OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

7. CITY shall keep the Cable and other property of AT&T free from all mechanic's, artisan's, materialman's, architect's, or similar services' liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.
8. Except for payment of the cost of the Work, neither party shall have any liability for its delays or its failure in performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the Elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.
9. A party shall be in default if it fails to perform or observe any material term or condition of this Agreement and the failure continues unremedied for thirty (30) days after receipt of written notice (fourteen (14) days in the case of CITY's failure to pay AT&T the estimated and/or actual cost of the Work); provided, however, that when such default (excluding City's non-payment) cannot reasonably be cured within such thirty (30) day period, this period will be extended if that party promptly commences to cure the same and prosecutes such curing with due diligence. Upon the default by a party, the other party may terminate this Agreement and pursue any legal remedies it may have under applicable law or principles of equity.
10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. CITY shall not assign, transfer, or dispose of this Agreement or any of its rights or obligations hereunder without prior written consent of AT&T; provided, however, that CITY may assign or transfer this Agreement to a controlling or controlled affiliate or to a successor in the event of reorganization, including a merger or sale of substantially all of its assets, without the consent of AT&T. An assignment, transfer or disposition of this Agreement by CITY shall not relieve CITY of any of its obligations under this Agreement. AT&T shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part, to any party. An assignment, transfer or disposition of this Agreement by AT&T shall not relieve AT&T of any of its obligations under this Agreement. Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.
11. Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, or by commercial overnight delivery service addressed to the recipient as set forth below or to such other address or individual, as may be designated by notice given by the party to the other:

**AT&T:**

AT&T CORP.  
3450 Riverwood Parkway SE  
Atlanta, GA 30339  
Room 162  
Attention: Right of Way Dept.

With a copy to:

AT&T Corp.  
One AT&T Way  
Room 3A118A  
Bedminster, NJ 07921  
Attention: Legal Department – Network Services

**CITY:**  
**City of Billings**  
**Travis Harris**  
**Public Works Dept.**  
**Billings, MT 59101**

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and if given by registered or certified mail, return receipt requested or by commercial overnight delivery service on the date of receipt thereof.

12. The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

13. This Agreement shall be governed by and construed in accordance with the domestic laws of the **State of Montana** without reference to its choice of law principles.

14. Each party represents and warrants that:

- (a) It has full right and CITY to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

- (c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and
- (d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court or body.

15. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral and written communications, understandings and agreements relating to the subject matter hereof, which are of no further force or effect. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

16. Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporate, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 16 and shall be entitled to enforce the obligations of this Section 16.

17. The relationship between the parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18. This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to benefit of the parties and each of their respective permitted successors and assigns.

19. No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

20. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their authorized representatives as of the date first above set forth.

**CITY OF BILLINGS**

**AT&T CORP.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Alvin S. Richardson  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Sr. Technical Project Manager  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

TAX ID:

## EXHIBIT A

### Scope of Work

**Engineer:** Duane Ward - Clearwater Consulting Group, INC.

**DATE:** 10/2/14

**TO:** AT&T - Rob Williamson

**PROJECT:** Billings, MT. East End Industrial Storm Drain Project

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The scope of work involves lowering of the existing 96 count at&t core fiber for City of Billings East End Industrial Storm Drain Project in Billings, MT. This project will encroach upon the existing fiber exposing the fiber to possible danger. The scheduled work will start approximately 50' west of AT&T marker post 1151, station number 8064+95. From this location the construction zone continues to the east for approximately 100' to at&t station number 8064+45. This project will install a new storm drain from an existing culvert tie-in near the Yegen Drain continuing under the BNSF railroad tracks to an existing culvert tie-in at 15<sup>th</sup> St in Billings, MT. This project is scheduled to start in the late winter or early spring of 2015 and may take one year to complete.

Before the City of Billings can start on the project, a new 96 count at&t fiber cable will be placed starting from the existing at&t splice vault at Sta. 8090+34, and ending at at&t assist vault at Sta. 8014+53. This work will involve boring at a minimum depth of 11' for approximately 250', installation of 6" Black Steel Pipe or equivalent and installation of (2) 250' sections of 2" HDPE Smooth Wall Innerducts. Contractor will also place (2) 36" x 60" x 24" assist vaults at each end of the bore. Contractor will expose existing conduits in possibly four locations for assist points. In these locations the conduits will be cut for fiber cable and #6 Wire installation, the conduit will then be coupled back together and back-filled. Approximately 7,881' of new 96 count fiber and approximately 7,681' of #6 Wire will be pulled/blown in from existing splice vault Sta. 8090+34 to assist vault Sta 8014+53.

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At assist vault Sta. 8014+53 a new splice will be created; a PCI will be performed at Sta. 8014+53 and at existing splice vault Sta. 8090+34. Connecting the new fiber cable to the existing fiber cable.

**Note:** at&t will supply the 96 count fiber cable. All other materials will be supplied by the contractor.

The contractor will have all of the utilities located within the work area, contact the City of Billings and/or the construction company responsible for the new construction and request to have one of their inspectors present to make sure that their bore pit has been properly marked. Contractor will bore in approximately 250' of 6" Black Steel Pipe or equivalent, add two assist vaults, one at Sta. 8063+45 and the other at Sta. 8065+90, install (2)2" HDPE smooth wall innerducts between stations 8065+90 to 8063+45 and pull/blow in 7,881 feet of 96 count at&t fiber cable leaving 50' slack loops at each assist vault and 100' in each splice vault. Contractor will also install 7,681 feet of #6 wire leaving 25' of slack at each assist and splice vaults.

A PCI splice will be performed in the existing at&t splice vault at Sta. 8090+34 and the at&t assist vault created splice vault at Sta. 8014+53, connecting the new fiber cable to existing core cable.

Total bore footage = 250'  
Total 6" Black Steel Pipe or equivalent footage = 250'  
Total 2" HDPE smooth wall innerducts = 500'  
Total assist vaults = 2  
Total fiber footage = 7,581'  
Total fiber pulled in conduit = 7,881'  
Total #6 Wire footage = 7,681'

**Contractor Note:** The required depth on the AT&T fiber is a minimum of 48" below final grade.

Cleanup and landscaping will be done according to City of Billings specifications.

The locations requiring the replacement for the total relocation of the conduits and AT&T fiber by station number

located on the AT&T job prints (CT 96450 sheets 581-585)  
are -

Sta. 8014+53 to 8090+34  
AT&T Marker No. 1134 to 1159

**Remarks:** There may be costs associated for a BNSF permit if one is needed to work within the utility right-of-way. Also Bonds and Permits from City of Billings to work within city limits.

**EXHIBIT B**

**AT&T Fiber Relocation ( Billings, Montana)**

**SCHEDULE A**

**BID ANALYSIS**

**SECTION 1**

ITEM NO.	DESCRIPTION	EST. QTY.	ESTIMATE	
			UNIT PRICE	AMOUNT
1	Mobilization	1	\$7,000.00	\$7,000.00
2	City of Billings Permits & Bonds	1	\$5,000.00	\$5,000.00
3	Assist Point Existing Fiber Excavation & Backfill	4	\$750.00	\$3,000.00
4	Pipe Placement-Directional Bore 6" BSP or Equivalent	250	\$65.00	\$16,250.00
5	Pipe/Duct Placement-Pull Method (2) 2" Smooth Wall Conduit	500	\$8.00	\$4,000.00
6	Assist Vault Placement 36" x 60" x 24" Assist Vault	2	\$2,625.00	\$5,250.00
7	New Lightguide Cable 96 Count Fiber Cable	8,000	\$1.05	\$8,400.00
8	Cable Placement-Lightguide Cable Cable Placement (Pull Method)	8,000	\$2.50	\$20,000.00
9	Cable Removal-Lightguide Cable Cable Removal for Disposal	7,581	\$5.00	\$37,905.00
10	New #6 Wire #6 Wire	7,700	\$4.00	\$30,800.00
11	Wire Placement - #6 Wire Wire Placement(Pull Method)	7,681	\$8.00	\$61,448.00
12	Splicing Single Fusion 96 count Fiber	1	\$42,670.00	\$42,670.00
13	Marker Pole (PVC) Type Relocate/New Marker Pole	2	\$125.00	\$250.00

**Section Totals**

**\$241,973.00**