

INTERLOCAL AGREEMENT FOR COMMUNICATIONS ATTACHMENTS TO UTILITY FACILITIES

THIS INTERLOCAL AGREEMENT (“Agreement”) is made by and between the City of Round Rock, a home-rule municipal corporation of the State of Texas (“City”) and Williamson County, Texas, a political subdivision of the State of Texas (hereinafter called “County”) executed by the Parties to be effective as of the date of the last Party’s execution below (the “Effective Date”), pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code. The City and County shall individually be referred to herein as a “Party” and collectively referred to as the “Parties.

RECITALS

WHEREAS, County proposes to install, operate and maintain communications facilities and associated equipment used for County’s public safety and governmental communication purposes (“Attachments”) on utility poles in City-owned and/or controlled public rights-of-way ("ROW") and public safety fiber optic infrastructure supporting County’s public safety communications in the ROW;

WHEREAS, City is willing, to the extent permitted by law, to issue one or more permits authorizing the placement or installation of County’s Attachments on utility poles and install public safety fiber optic infrastructure in the ROW, subject in all instances to considerations of City’s permitting requirements;

WHEREAS, City may deny at its sole discretion, issuance of a permit, on a nondiscriminatory basis, where there is insufficient capacity for reasons of safety, reliability and generally applicable engineering purposes and/or other applicable standard; and

WHEREAS, City and County previously entered into an agreement for communications attachments to utility facilities, and City and County hereby now intend and agree that the existing agreement shall be terminated as of the Effective Date of this Agreement and be, for all purposes, supplanted by this Agreement.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants, and the terms and the conditions contained in this Agreement, and the rights and obligations created under this Agreement, the Parties agree as follows:

I. INCORPORATION

All matters and recitations stated in the Recitals of this Agreement, which are set out hereinabove, are true and correct and are hereby incorporated by reference into the provisions of this Agreement for all purposes.

II. PURPOSE

The purpose of this Agreement is to establish terms and conditions under which the County may utilize the utility poles and ROW for the installation, operation, and maintenance of County's Attachments and public safety fiber optic infrastructure. This includes:

- A. Attachments to the City's poles and utility provider poles located within the ROW (including but not limited to Oncor poles, subject to separate written agreements with the applicable utility provider);
- B. Underground boring and conduit installation within the ROW; and
- C. Construction and maintenance of associated fiber infrastructure supporting County's public safety communications.

III. SCOPE OF AGREEMENT

Subject to the terms of this Agreement, City hereby grants County a revocable, non-assignable, and nonexclusive license authorizing County to install and maintain Attachments to utility poles and fiber optic infrastructure supporting County's public safety communications in the ROW (the "License"). Said License shall include the right to:

- A. Install fiber optic cable and related facilities within the ROW.
- B. Perform underground boring, trenching, and conduit placement as necessary.
- C. Attach fiber facilities to utility poles owned by third-Party providers, subject to obtaining all required written permissions from such providers and providing a copy to City.
- D. Access the ROW for ongoing maintenance, repair, upgrades, and emergency response activities.

County hereby acknowledges and agrees that all work allow under this Agreement shall be limited for County's public safety and governmental communications purposes.

IV. CONSIDERATION

The Parties hereby agree the City's grant of the License and the County's use of the ROW for purposes of installing the Attachments and public safety fiber optic infrastructure supporting County's public safety pursuant to the License constitute a public benefit to both Parties. As additional consideration for the City's grant of the License, the County hereby agrees to grant the City use of three pair of fiber (6 strands) of the County's fiber optic facilities that are installed and constructed in the ROW within the City's corporate limits pursuant to the License, as well as the use of one innerduct sleeve of the conduit that will be bored and installed to cross IH-35.

V. PERMITS AND COORDINATION

The County shall coordinate all construction activities with the City's designated departments, including but not limited to the City's Public Works and Information Technology Departments. However, in lieu of the City's standard permitting, this Agreement shall serve as authorization for the described and authorized activities, provided the County complies with all applicable City standards, specifications, and policies. The County agrees that it must provide advance notice of construction activities and submit in advance project plans for review and approval as reasonably required by the City.

VI. COMPLIANCE WITH STANDARDS

All work performed by County under this Agreement shall:

- A. Comply with applicable federal, state, and local laws;
- B. Follow City construction standards, including, but not limited to, traffic control, restoration, and safety requirements;
- C. Adhere to utility coordination requirements, including Texas 811 notifications; and
- D. Minimize disruption to the public and existing infrastructure.

VII. RESTORATION

The County shall restore any disturbed ROW to a condition equal to or better than its pre-construction state, in accordance with City standards.

VIII. LIABILITY AND INSURANCE

Each Party to this Agreement shall be responsible for its own acts and omissions and those of its officers, employees, and agents. To the extent permitted by Texas law, the County agrees to maintain appropriate insurance or self-insurance coverage for activities performed under this Agreement. Nothing in this Agreement shall be construed as a waiver of governmental immunity.

IX. TERM AND TERMINATION

This Agreement shall become effective upon the Effective Date and shall remain in effect for a period of five (5) years thereafter, unless terminated earlier by mutual agreement. Either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party.

X. FEES AND CHARGES

The following provisions shall apply to any fees and charges, if any, associated with this Agreement:

- A. No Franchise or Lease Intended. This Agreement does not constitute a franchise, lease, or conveyance of a real property interest. The rights granted herein are limited to those necessary to accomplish the governmental purposes described.
- B. Fees and Charges. Unless otherwise required by law or separately agreed in writing, the County shall not be subject to franchise fees or any charges for use of the ROW for its governmental and public safety purposes.
- C. The County shall be responsible for standard cost-recovery fees associated with plan review, inspections, or extraordinary administrative efforts, if applicable.
- D. Any fees shall be reasonable, nondiscriminatory, and consistent with those applied to similarly situated governmental entities.
- E. Third-Party Costs. The County shall be solely responsible for any costs associated with utility pole attachment agreements with utility providers (including Oncor or other pole owners); make-ready work required by utility providers; and relocation or modification of County facilities if required by a utility provider or roadway project, subject to applicable law.
- F. Cost Responsibility for Construction and Maintenance. The County shall bear all costs related to the design, installation, construction, operation, maintenance, repair, and replacement of its fiber infrastructure within the ROW.
- G. Relocation. If the City determines that relocation of County's Attachments or fiber optic infrastructure is necessary for a public project, the Parties agree to coordinate in good faith. Responsibility for relocation costs shall be determined in accordance with applicable state law and standard utility accommodation practices.
- H. Invoicing and Payment. Any applicable fees shall be invoiced to the County and paid in accordance with Chapter 2251 of the Texas Government Code (Texas Prompt Payment Act).

XI. MISCELLANEOUS

- A. Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- B. Non-Exclusivity. This Agreement is non-exclusive and does not restrict the City from granting similar rights to other entities.
- C. Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*, and is made by and entered into by the duly authorized officials of each respective governmental entity.
- D. Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

- E. Force Majeure. If, by reason of force majeure, any Party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such Party shall give written notice of the full particulars of such force majeure to the other Party within ten (10) days after the occurrence thereof. The obligations of the Party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the Party claiming such inability.
- F. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- G. Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.
- H. Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.
- I. Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below.

County:	Williamson County ITS 301 SE Inner Loop, Suite 105 Georgetown, TX 78626
City:	City Manager 221 East Main Street Round Rock, Round Rock, Texas 78664
<i>With copy to:</i>	Stephanie Sandre, City Attorney Sheets, Childs & Sandre, PLLC 309 East Main Street Round Rock, TX 78664

- J. Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

K. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement to be effective as of the Effective Date.

CITY OF ROUND ROCK, TEXAS (City)

BY: _____

TITLE: _____

DATE: _____, 20____

WILLIAMSON COUNTY, TEXAS (County)

By: _____

Title: As Presiding Officer of the
Williamson County Commissioners Court

Date: _____, 20____