

JOINT RELOCATION AND REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made effective as of the ____ day of _____, 2013, by and among **AT&T CORP.** (hereinafter referred to as "Lead Carrier"), having an office at 3450 Riverwood Parkway SE, Atlanta, GA 30339, and **City of Portland**, having an office at 1221 SW 4th Avenue, Portland, OR 97204 (hereinafter referred to as "Co-Op Carrier").

WITNESSETH:

WHEREAS, Lead Carrier and Co-Op Carrier, hereinafter collectively referred to "Carriers" or individually as "Carrier", have the need to construct/relocate/protect fiber optic cable and/or conduit facilities along NE 33rd Drive North of NE Columbia Blvd. in the City of Portland, Oregon, as more fully described in Exhibit "A" attached hereto and incorporated herein as referenced; and

WHEREAS, Lead Carrier has agreed to provide construction, engineering and materials for Co-Op Carrier's facilities as part of this project;

WHEREAS, Lead Carrier and Co-Op Carrier wish to set forth the terms and conditions of said construction and reimbursement effort;

NOW, THEREFORE, in consideration of the mutual promises and conditions set forth below, the Carriers agree as follows:

1. Lead Carrier shall be responsible for managing the construction and ensuring that it is completed in accordance with the plans and specifications set forth in Exhibit "A". Construction of these facilities shall be completed by a contractor selected by Lead Carrier using its normal bidding process from a list of contractors approved by the Co-Op Carrier. Co-Op Carrier may inspect the work at any reasonable time, either prior to, during or after construction to ensure that the specifications have been carried out. The inspection shall not operate as a waiver of the inspecting Carrier's rights under this Agreement.
2. Each Carrier shall be solely responsible for obtaining any necessary rights-of-way, encroachment permits, licenses, approvals or any other authority required for that Carrier to maintain its occupancy and use of the right-of-way during and after completion of the construction.
3. Upon completion of the construction, each Carrier agrees to maintain its respective facilities and system separately and apart from any other Carrier's facilities and system; however, any operations or actions having the potential to impact or interfere with any other Carrier's facilities or system, or to disrupt the integrity of any Carrier's facilities or system in any way, must be coordinated (as much in advance as possible) with the other Carrier.

4. Reimbursement to Lead Carrier for costs and expenses:

Co-Op Carrier agrees to reimburse Lead Carrier within sixty (60) days of the receipt of detailed invoice(s) with supporting documentation for the costs of applicable material, engineering, construction and permits. Reimbursement shall be on the following basis:

- a. The estimated cost of the relocation for both AT&T and Co-Op Carrier is **THREE HUNDRED FORTY THREE THOUSAND and 00/100 Dollars (\$343,000.00)**, as shown in Exhibit "B". Co-Op Carrier will be responsible for Seventeen Percent (17%) of the total shared costs.

(1) AT&T CORP.	\$ 284,690.00
(2) City of Portland	\$ 58,310.00

- b. Each Carrier agrees to pay for any and all of those actual expenses attributable to any unique work, supplies or material required, for that Carrier's respective facilities or system as set forth in Exhibit "C" attached hereto and incorporated herein by reference.

5. In no event shall any Carrier hereunder be liable to any other Carrier for any indirect, consequential or incidental damages, including, without limitation, loss of revenue, loss of customers or loss of profits arising from this Agreement and the performance or non-performance of obligations hereunder.

6. Each Carrier's inspector shall have the right to stop construction if construction activity would jeopardize the integrity of such Carrier's system or would cause an unsafe or hazardous condition. In the event that the dispute leading to the work stoppage is not resolved within four (4) hours of such interruption, the Carriers may escalate the issue to the restoration and upgrade manager of the objecting Carrier. The restoration and upgrade manager of each Carrier is as follows:

<u>Carrier</u>	<u>Contact</u>	<u>Phone Number</u>
AT&T	Dan McGeough	(425) 896-9830
City of Portland	Lloyd C. Stauning	(503) 823-7633

Should the restoration and upgrade managers be unable to settle such dispute, the dispute shall promptly be settled by a single arbitrator who shall be a neutral civil engineer acceptable to the majority of Carriers or appointed by a court of competent jurisdiction should the Carriers be unable to agree on the selection. The Lead Carrier shall be relieved of responsibility for any delays or other problems with construction which result from work stoppages under this Section 8 unless the delay or problem was the result of a condition caused by Lead Carrier.

7. To the extent allowed by the Oregon Constitution and the Oregon Tort Claims Act, Co-Op Carrier shall indemnify, defend and hold harmless Lead Carrier, its employees, officers, directors, agents, contractors and assigns of each of them, from any loss, damages and injuries, including death, to any person, arising out of this Agreement the performance or the breach thereof, to the extent such damage, injury or death was caused by the negligence of the indemnifying party, any subcontractor of the indemnifying party or their employees, servants, contractors, subcontractors or agents while performing under this Agreement. Lead Carrier shall indemnify, defend and hold harmless Co-Op Carrier, its employees, officers, directors, agents, contractors and assigns of each of them, from any loss, damages and injuries, including death, to any person, arising out of this Agreement the performance or the breach thereof, to the extent such damage, injury or death was caused by the negligence of the indemnifying party, any subcontractor of the indemnifying party or their employees, servants, contractors, subcontractors or agents while performing under this Agreement. Such indemnification and save harmless obligations shall apply only to direct damages which are proven and shall not apply to the extent such damage, injury or death was caused by the indemnified party's act or omission or the act or omission of the indemnified party's agents, servants, employees or others; and, provided, that such indemnification and save harmless obligations are expressly conditioned on the following: (i) that the indemnifying party shall be notified in writing promptly of any such claim or demand (ii) that the indemnifying party shall have sole control of the defense of any action or such claim or demand and of all negotiations for its settlement or compromise, and that (iii) the indemnified party shall cooperate with the indemnifying party in a reasonable way to facilitate the settlement or defense of such claim or demand.
8. Lead Carrier warrants that the work hereunder shall comply with all applicable state and local laws and ordinances and will strictly comply with the provisions of this Agreement and with all specifications and drawings referred to in this Agreement. The work hereunder performed by Lead Carrier or its contractors shall be first-class in every particular and shall be free from defects in materials, construction and workmanship. Lead Carrier further guarantees Co-Op Carrier that all materials, equipment and supplies furnished by Lead Carrier for the work shall be new, merchantable and of the most suitable grade and fit for their intended purpose. Without limitations of any other rights or remedies of Co-Op Carrier, if any defect in the work in violation of the foregoing guarantees arises within twelve (12) months after the date of final acceptance of work by Co-Op Carrier, Lead Carrier shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Co-Op Carrier, all labor, equipment and materials at the job site necessary to correct such defect and cause the work to comply fully with the foregoing guarantees. If Lead Carrier fails to promptly correct any defect, then Co-Op Carrier may correct, or cause to have corrected, such defect and Lead Carrier shall reimburse Co-Op Carrier for all such related, reasonable and verifiable costs of correction.

9. Lead Carrier shall obtain and comply with, or cause to be obtained and complied with, all permits, certificates and licenses required by any governmental authority for the work hereunder. Lead Carrier (or its subcontractor) shall comply with all railroad safety requirements, OSHA and the general safety requirements, as well as all other federal, state and local rules and regulations which may apply during the performance of the work hereunder and shall indemnify, defend and hold harmless Co-Op Carrier and any other entity granting the right-of-way and their directors, officers, employees and representatives against all liability, claims, losses, fines and penalties arising out of the failure or asserted failure of Lead Carrier or its subcontractor(s) to comply therewith.
10. Lead Carrier shall maintain or cause to be maintained, during the entire progress of the work hereunder, insurance of the following types with limits not less than those set forth below:
 - a. Worker's Compensation in accordance with the provisions of the applicable Worker's Compensation law or similar laws of the state or other political division having jurisdiction over the employee, and Employer's Liability with a limit of liability of \$100,000.00 for each occurrence.
 - b. Commercial General Liability, including coverage for independent contractors, Completed Operations Liability and Contractual Liability, with limits of \$1,000,000.00, per occurrence and \$2,000,000 aggregate for bodily injury and property damage.
 - c. Automobile liability covering use of all owned, non-owned and hired vehicles with a combined single limit of liability of \$1,000,000.00 per occurrence for bodily injury and property damage.
 - d. Upon request, Certificates of Insurance reasonably satisfactory in form to Co-Op Carrier shall be supplied by Lead Carrier to Co-Op Carrier evidencing that the above insurances are in force, that insurers shall endeavor to provide not less than thirty (30) days' written notice to the Co-Op Carrier prior to any cancellation of the policies and that the waiver of subrogation described below is in force.
 - e. Lead Carrier hereby waives subrogation against and releases Co-Op Carrier from all liability covered by Lead Carrier's insurance for losses or claims arising out of Lead Carrier's performance of this Agreement.
 - f. Co-Op Carrier shall be included as Additional Insured on all liability insurance policies required by this Agreement, except

Worker's Compensation, required in this Section 11.

- g. All insurance policies shall provide coverage with respect to work performed on railroad right-of-way and shall be in addition to any other insurance coverage Lead Carrier is required to have under the terms of its agreement(s) for use and occupancy of the right-of-way within which the construction hereunder is to be performed.
- 11. Lead Carrier agrees to indemnify, defend and hold Co-Op Carrier and the entity granting the right-of-way harmless from all laborers', materialmen's and mechanics' liens arising out of Lead Carrier's performance of work hereunder and shall keep the property and premises of the entity granting the right-of-way and Co-Op Carrier free from all such claims, liens and encumbrances. To the full extent permitted by law, Lead Carrier waives all rights of lien against the property and premises of the entity granting the right-of-way and Co-Op Carrier. If Lead Carrier fails to release and discharge any such claim or lien within thirty (30) days after the receipt of notice from Co-Op Carrier or the entity granting the right-of-way to remove such claim or lien, Co-Op Carrier may, at its sole option, discharge or release the claim or lien and Lead Carrier shall pay Co-Op Carrier any and all costs and expenses, including reasonable attorney's fees and cash settlements, incurred by Co-Op Carrier in connection with such discharge or release.
- 12. To the extent allowed under the Oregon Public Records Law, Lead Carrier and Co-Op Carrier agree that all information with respect to this relocation will be kept confidential and will be used for internal company purposes only.
- 13. This Agreement may be executed by the parties in separate counterparts, each of which shall be deemed to be an original copy, but all of which, together, shall constitute only one agreement.
- 14. This Agreement, and attachments hereto, supersedes and replaces any prior agreements, understandings or arrangements, whether oral or written, heretofore made between the Carriers and relating to the subject matter hereof. This Agreement shall not be modified, changed, altered or amended except by express written agreement signed by duly authorized representatives of all the Carriers hereto.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Carriers hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.

AT&T CORP.

Witness:

By: _____
Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Date: _____

Witness:

CITY OF PORTLAND

By: _____
Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Date: _____

APPROVED AS TO FORM
APPROVED AS TO FORM

James H. Van Dyke *WPS*
CITY ATTORNEY

City Attorney

EXHIBIT A

SCOPE OF WORK

AT&T will provide design, engineering, and construction services as lead carrier for building conduit and associated facilities to relocate conduit in conflict with construction of the new Buffalo Slough culvert on NE 33rd Drive in the City of Portland, Oregon. More specifically, from existing manholes at the North side of the Columbia Slough Bridge South to the manholes at the corner of NE 33rd Drive and Columbia Ct., AT&T station 2160+60 to station 2172+40. The culvert replacement project is currently understood as replacement of the existing corrugated metal pipe culvert with a precast segmental concrete box culvert with foundation depths in conflict with the existing conduit system and AT&T cable. Relocation should take place prior to issuance of the Notice To Proceed for culvert construction activities. Relocation will include abandonment of the existing bore and fiber optic cable under the culvert and relocating to typical trench depths in the roadway, a new bridge attachment on the Columbia Slough bridge and a steel casing protected and beam supported section spanning the anticipated excavation over Buffalo Slough with an ability to move the span horizontally in either direction to facilitate the placement of precast sections of the new box culvert. This scope has been developed from discussion with and conceptual approval by City of Portland project management staff. The permitting agency with jurisdiction for this section of build will be with the City of Portland. Relocation of AT&T and City of Portland facilities will include installation of ten 1-1/2" HDPE conduits for AT&T and two 1-1/2 HDPE conduits for the City of Portland in the following manner: 140 LF of bridge attachment, 60 LF of steel encased buried beam attachment, 1000 LF of open trench and/or directional bore, placement of 2 manholes and all other associated work items to complete the project. Additionally, this culvert project is a continuation of the same project previously initiated by the City of Portland and the Army Corps of Engineers, which was unsuccessful and put on hold in 2012, and is referenced in Exhibit B as Phase 1. Shared costs incurred only for engineering, project administration and manholes installed during the first phase of the relocation project before it got put on hold are included in this estimate, as previously coordinated by AT&T and the City of Portland. Construction costs incurred during the failed bore attempts are not included, per AT&T. Unique costs for each carrier are preliminary and are described in Exhibit C.

EXHIBIT B**Project Cost Estimate Breakdown**

	AT&T Corp. (83 %)	City of Portland (17%)	Total Cost (100%)
<u>Phase 1 (Completed 5/2012)</u>			
Consultant Engineering Cost:	\$62,250.00	\$12,750.00	\$75,000.00
Construction & Materials Cost:	\$16,600.00	\$3,400.00	\$20,000.00
<u>Phase 2 (In Progress)</u>			
Consultant Engineering Cost:	\$77,190.00	\$15,810.00	\$93,000.00
Construction & Materials Cost:	<u>\$128,650.00</u>	<u>\$26,350.00</u>	<u>\$155,000.00</u>
Total Project Estimated Cost:	\$284,690.00	\$58,310.00	\$343,000.00

EXHIBIT C**UNIQUE WORK**

AT&T: Fiber Optic Cable Splicing and Contractor Support
 Fiber Optic Cable Material and Installation
 Installation/Adjustment of Beam Supported Cable & Casing

City of Portland: None