

**AFTER RECORDING, RETURN TO:**  
**Southwestern Bell Telephone Company**  
**d/b/a AT&T Texas**  
**Attn: Gary Tilory Utility Coordinator**  
**1116 Houston Street, Room 1401**  
**Fort Worth, Texas 76102**

**Encroachment:**

### **ENCROACHMENT PERMIT**

THIS PERMIT is issued as of the            day of            ,            by Southwestern Bell Telephone Company, d/b/a AT&T Texas, ("AT&T") to            ("Permittee").

### **TERMS AND CONDITIONS**

#### **1. Purpose and Scope of Permit**

AT&T hereby allows and permits Permittee the non-exclusive use of certain lands hereinafter described for the following purpose, subject to the conditions and stipulations herein set forth:

Permittee is allowed to:

#### **2. Encroachment Location(s)**

see attachments --

#### **3. Risk of Entry**

AT&T makes no warranty whatsoever as to physical conditions which exist now, or may exist hereafter, at said Encroachment Location(s) and Permittee accepts said Encroachment Location(s) "AS IS" and agrees to enter thereupon at Permittee's own risk.

#### **4. Permittee's Duties**

By accepting this Permit, Permittee agrees, without qualification or limitation:

- (a) to make no modifications or additions to its facilities at the Encroachment Location(s) without first obtaining AT&T's prior written consent;
- (b) to comply with the Texas Underground Facility Damage Prevention and Safety Act, Texas Utilities Code, Section 251.001, et seq., prior to performing any construction, demolition or repairs at the Encroachment Location(s);
- (c) to not use at the encroachment location(s) any tool, equipment, or machinery capable of being operated within ten (10) feet of cable lines;
- (d) 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;
- (e) to assume all risks of and relieve AT&T of any and all liability for loss of damage to property or facilities installed by it and any other financial loss sustained by it;
- (f) to indemnify, defend and hold harmless AT&T from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, settlement liabilities, costs and expenses (including, without limitation, interest, penalties, and reasonable attorneys' fees and disbursements) that may from time to time be suffered or incurred by, or asserted against AT&T 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, or for any financial loss of whatever nature, in any way arising out of or in connection with this Permit or activities undertaken pursuant to this Permit, whether caused by the acts, negligence or willful misconduct of Permittee, its agents, employees, representatives, contractors, permitted assigns, or those under Permittee's control or by failure to perform the covenants or conditions of this Permit. Permittee's obligations to indemnify and hold harmless shall survive any termination or abandonment of this Permit. For purposes of indemnifications set forth in this Permit, "AT&T" means AT&T, its affiliates, subsidiaries, parent, successors and assigns and its and their employees, directors, officers, agents, contractors and subcontractors;

- (g) to neither cause nor permit use of the rights herein granted by any other person except Permittee's lawful successors, and if Permittee is a utility company, any transferee of the utility system (or operating component of a utility system) of which the Permittee's facilities at the Encroachment Location(s) are a part;
- (h) that AT&T retains all of its rights with respect to its property, right-of-way or easement. Specifically, AT&T retains the right to access its telecommunications facilities to repair, maintain or augment its telecommunications network. Any damage to Permittee's facilities as a result of AT&T's exercise of its rights with respect to its property, right-of-way or easement shall be the sole responsibility of Permittee;
- (i) to not use, have present nor transport on or about the Encroachment Location(s) any hazardous or toxic materials, wastes or substances or any pollutants or contaminants ("Hazardous Substances"), without the prior express written consent of AT&T. If at any time during the term of this Permit, Permittee knows or has reason to believe that any Hazardous Substances have come, or will come, to be located upon, about, or underneath the Encroachment Location(s), then Permittee shall, as soon as reasonably possible, give verbal and written notice of that condition to AT&T. Permittee covenants to investigate, clean-up and otherwise remediate any release of such Hazardous Substances by Permittee, its agents, employees, representatives, contractors, permitted assigns, or those under Permittee's control at Permittee's cost and expense. Permittee shall notify AT&T prior to commencing any clean-up or remediation; and
- (j) NOTWITHSTANDING ANY PROVISION OF THIS PERMIT TO THE CONTRARY, EXCEPT AS SET FORTH IN PARAGRAPH 4(f), 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 ANY OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

## **5. Incompatible Facilities**

This Permit is issued by AT&T and accepted by Permittee with the mutual belief that the facilities of each can exist at the Encroachment Location(s) in the form contemplated when this Permit was issued without disruption to the other. If at anytime for any reason Permittee's facilities are determined in AT&T's judgment to be incompatible with AT&T's then existing or then proposed facilities, Permittee agrees it shall cure any such incompatibility by modifying its facilities, by removing its facilities or by taking whatever other action which in AT&T's judgment is necessary.

## **6. Fee Title: Superiority of Prior Interest**

If neither AT&T nor Permittee own fee simple title to the lands at the Encroachment Location(s), the authorization required by Permittee from the fee simple owner shall be obtained at Permittee's sole cost. In any judicial construction of this Permit, it shall be recognized that AT&T, by virtue of prior rights and prior possession and by virtue of this Permit, shall enjoy with respect to the Encroachment Location(s) rights superior to those of Permittee.

## **7. Cost**

This permit is issued by AT&T and accepted by Permittee with the understanding that Permittee's use of the permission herein granted shall not result in any cost to AT&T. No claims for payment or performance shall be made of AT&T by Permittee and any expenses incurred by AT&T related to Permittee's exercise of the rights herein permitted shall be promptly reimbursed to AT&T by Permittee. In enforcing this permit against Permittee, AT&T shall be entitled to collect reasonable attorney's fees, court costs and interest on the principal sum.

## **8. Notices**

Except as expressly otherwise provided, any demand, notice or other communication to be given to a party in connection with this Permit 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:** Gary Tilory  
Manager Engineering Design/Utility Coordinator  
1116 Houston Street, Room 1401  
Fort Worth, Texas 76102

**Permittee:**

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.

**9. Successors and Assigns**

The permission hereby given shall be binding upon the heirs, administrators, executors and assigns of both parties.

IN WITNESS WHEREOF, the parties have executed this Permit as of the date first above set forth.

**Southwestern Bell Telephone Company**

By: \_\_\_\_\_  
Name: Gary Tilory  
Title: Manager Engineering Design

**Permittee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Corporate Acknowledgement

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the subscriber, personally appeared \_\_\_\_\_ to be known, who, being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in, and which executed the foregoing instrument, and that he signed his name thereto by order of the Board of Directors.

\_\_\_\_\_  
Notary Public

Partnership Acknowledgement

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, to be known and known to me to be a partner of \_\_\_\_\_, the partnership described in, and acknowledged that he executed the foregoing instrument for and on behalf of said partnership.

\_\_\_\_\_  
Notary Public

Individual(s) Acknowledgement

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared to me \_\_\_\_\_ who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

\_\_\_\_\_  
Notary Public