

STANDARD UTILITY AGREEMENT

U-0036: **FiberLight, LLC**
County: Fort Bend
Highway: FM 1093 Westpark Extension Phase II

This Agreement by and between the County of Fort Bend, Texas, ("**County**"), and FiberLight, LLC, ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the **County**.

WHEREAS, the **County** has deemed it necessary to make certain highway improvements as designated by the **County** and approved by the Federal Highway Administration within the limits of the highway as indicated above;

WHEREAS, the proposed highway improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of **Utility** as indicated in the following statement of work: Relocation of assets into a predesignated corridor according to the following schedule:

Start Date – April 2, 2018
Completion Date – May 31, 2018

and more specifically shown in **Utility's** Plans and Specifications, Estimated Costs, and Schedule which are attached hereto as Exhibits "A," "B" and "C."

WHEREAS, Subchapter E of Chapter 203 of the Texas Transportation Code regarding the relocation of utilities does not apply to this Project, but the County wishes to negotiate in good faith and enter into agreements with all affected utility companies for the participation in the costs of the adjustment, removal, and/or relocation of certain facilities as authorized under such subchapter.

WHEREAS, the **County**, upon receipt of evidence it deems sufficient, acknowledges **Utility's** interest in certain lands and/or facilities and determined it is appropriate to enter an agreement with **Utility** to govern the terms for participation in the costs of the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

NOW, THEREFORE, BE IT AGREED:

The **County** will pay to **Utility** fifty percent (50%) of the documented actual costs incurred for relocation of the utility in adjustment, removal, and/or relocation of **Utility's** facilities up to the amount said costs may be eligible for **County** participation.

All conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable federal and state laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4231, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and with the Utility Accommodation provisions of 23 CFR 645, Subpart B. **Utility** shall supply, upon request by the **County**, proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by **County**, or may, with the **County's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by **Utility**. Bills for work hereunder will be submitted to **County** not later than 90 days after completion of the work.


Date

Fort Bend County


Initial Date

FiberLight, LLC

When requested, the **County** will make intermediate payments at not less than monthly intervals to **Utility** when properly billed and such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

Upon execution of this agreement by both parties hereto, the **County** will, by written notice, authorize the **Utility** to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **County** or any other party with **Utility's** ability to proceed with the relocation, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of **Utility**.

However, for any failure by **Utility** to conclude said adjustment, removal, or relocation by the stated completion date not caused by events outside **Utility's** control, the **County** may elect to: (1) reduce the reimbursement to **Utility** by one percent (1%) each day delayed; or (2) relocate the facility at the sole cost and expense of **Utility**.

The **County** will, upon satisfactory completion of the relocation or adjustment and upon receipt of final billing prepared in an approved form and manner, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **County** reimbursement.

Unless an item below is stricken and initialed by the **County** and **Utility**, this agreement in its entirety consists of the following:

1. Standard Utility Agreement;
2. Plans & Specifications (Attachment "A");
3. Utility Construction Cost Estimate (Attachment "B");
4. Utility's Schedule of Work and Estimated Date of Completion (Attachment "C").

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **County and Utility**.

This agreement is subject to cancellation by the **County** at any time up to the date that work under this agreement has been authorized and that such cancellation will not create any liability on the part of the **County**. However, the **County** will review and reimburse the **Utility** for eligible costs incurred by the **Utility** in preparation of this Agreement.

The **Utility** acknowledges to and for the benefit of the **County** and State of Texas that it understands the project under this Agreement is eligible for Federal-aid highway funds and as such, requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the **Utility** pursuant to this Agreement.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **County** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights which **Utility** may have within the limits of the law.




Date
Fort Bend County



Date



Initial



Date


FiberLight, LLC

It is expressly understood that the **Utility** conducts the adjustment, removal, or relocation at its own risk, and that Fort Bend County, Texas makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

UTILITY

Utility: FiberLight, LLC
Name of Utility


By: 
Authorized Signature

Kevin B Coyne
Print or Type Name

Title: Chief Operating Officer

Date: October 1, 2018



 11/8/19
Date
Fort Bend County

 10/1/18
Initial *Date*
FiberLight, LLC

EXECUTION RECOMMENDED:

COUNTY

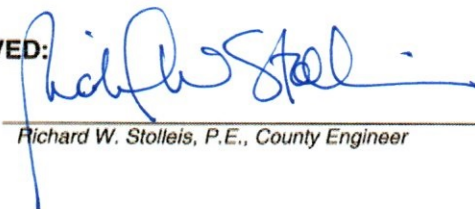
By: _____
KP George, County Judge

Date: _____

ATTEST:

By: _____
Laura Richard, County Clerk

APPROVED:

By:  _____
Richard W. Stolleis, P.E., County Engineer

APPROVED AS TO LEGAL FORM:

By: _____
Marcus D. Spencer, First Assistant County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

 _____
Date 11/8/19
Fort Bend County

 _____
Initial _____ Date 10/1/18
FiberLight, LLC

**Exhibit A
Plans & Specifications**

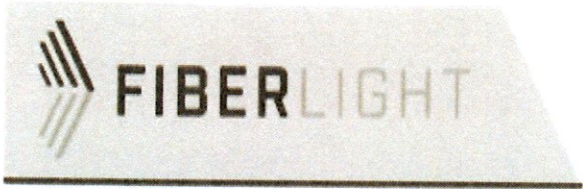
To be attached and
Reference is made to PDF file titled:

Level 3 Fulshear, TX FM 1093 Westpark Extension Phase II 3-7-18


Date 11/8/19
Fort Bend County


Initial Date 10/1/18
FiberLight, LLC

**Exhibit B
Construction Cost Estimate**



Estimate

Customer

Name	County of Fort Bend, Texas	Date	9/6/2018
Address		Order No.	
City	State	ZIP	
Phone		Rep	Mike Lamb

Scope of Work

Relocation of assets along FM 1093 Westpark Extension Phase II into a predesignated corridor according to the following schedule:
Start Date - April 2, 2018 / Completion Date - May 31, 2018

Relocation more specifically shown in Utility's Plans and Specifications, Estimated Costs, and Schedule which are attached to the Agreement as Exhibits "A," "B" and "C."

Qty	Description	Unit Price	TOTAL
1	Construction	\$77,823.21	\$77,823.21
1	Place and Remove Fiber	\$43,300.00	\$43,300.00
1	Splicing	\$12,000.00	\$12,000.00
1	Fiber Optic Cable	\$25,040.00	\$25,040.00

SubTotal \$ 158,163.21

Shipping

Tax Rate(s)

TOTAL \$ 158,163.21

Payment

Comments

All work completed pursuant to the terms and conditions contained in the Agreement

Office Use Only

HAVE A NICE DAY

[Signature] 1/8/19
Date
Fort Bend County

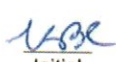
[Signature] 10/1/18
Initial Date
FiberLight, LLC

Exhibit C
Schedule of Work and
Estimated Dates of Completion
(As Shown Below)

Construction Schedule:

Begin Construction: April 2, 2018
Complete Construction: May 31, 2018


Date 11/8/19
Fort Bend County


Initial Date 10/1/18
FiberLight, LLC