

## **AGREEMENT**

This Agreement ("Agreement") is made and entered into this 20th day of December, 2011, by and between the City of Oklahoma City, a municipal corporation, hereinafter referred to as the "City," and SOUTHWESTERN BELL TELEPHONE COMPANY, a Missouri Corporation, doing business as AT&T Oklahoma, hereinafter referred to as "AT&T Oklahoma" or "Company," with AT&T Oklahoma and City sometimes separately referred to hereinafter as a "party," and sometimes collectively as "parties."

**WHEREAS**, every telephone or telegraph corporation authorized to conduct transportation or transmission business under the laws of the State of Oklahoma for such purpose has the right to construct and operate between any points in this State pursuant to Article IX, Section 2 of the Constitution of the State of Oklahoma and Title 18, § 601, subject to control of the proper municipal authorities as to what grounds, streets, alleys or highways said lines shall run over or across, and the place the poles to support the wires are located;

**WHEREAS**, AT&T Oklahoma represents that it desires to upgrade its existing facilities and equipment, and install new facilities and equipment, and further represents that it offers, among other things, an integrated internet protocol ("IP") platform of voice, data, information and video services (the video component of which is switched, two-way, point-to-point and interactive and is referred to herein as the "IP-enabled Video Service") within the geographic boundaries of the City;

**WHEREAS**, AT&T Oklahoma takes the position, based on Okla. Const. Article IX, §2 and 18, Okla. Stat. §601, and other applicable law, that it is not required to obtain authorization from the City in order to provide its IP-enabled Video Service; however, notwithstanding its position, as stated above, in consideration of the forbearance of litigation by the City in relation to the provision of IP-enabled Video Service by AT&T Oklahoma within the City and the City's agreement to follow its normal permitting practices with respect to installation of facilities that may be used in whole or in part to provide IP-enabled Video Services, AT&T Oklahoma is willing to enter into this Agreement and to pay an IP-enabled Video Services Provider Fee as set forth more fully below so that both AT&T Oklahoma and the City can achieve the full benefits that competition and the availability of such services will bring to the community and citizens of the City; and

**WHEREAS**, in consideration of the payment of the IP-enabled Video Services Provider Fee by AT&T Oklahoma to the City and the forbearance of litigation by AT&T Oklahoma in relation to the provision of IP-enabled Video Service by AT&T Oklahoma within the City, the City is willing to enter into this Agreement; and

**WHEREAS**, the parties understand and agree that neither party shall be deemed to have waived any of its legal rights by entering into this Agreement except as expressly provided herein;



**NOW, THEREFORE,** in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties agree as follows:

1. Term of Agreement: This non-exclusive Agreement shall take effect upon approval hereof by AT&T Oklahoma and by the City Council of the City and shall be effective for a term of five (5) years thereafter, December 31, 2016. Prior to the end of this term, the parties agree to enter into good faith negotiations regarding a possible renewal and/or modification and/or extension of this Agreement.

2. Nature of Agreement:

(A) No privilege or exemption shall be granted or conferred by this Agreement except those specifically prescribed herein.

(B) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City by this Agreement shall be subject to transfer by the City to any other officer, employee, department, or board of the City.

(C) This Agreement shall not relieve AT&T Oklahoma of any existing obligations involved in obtaining permits, pole or conduit space from any department of the City, utility company, or from others maintaining utilities in streets.

(D) This Agreement shall be a privilege to be held in personal trust by AT&T Oklahoma for the benefit of the public. Said privilege cannot in any event be sold, transferred, leased, assigned or disposed of (except to an affiliate of AT&T Oklahoma), including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior written consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall not, however, be unreasonably withheld.

3. Obligations of AT&T:

(A) During the term of this Agreement, AT&T Oklahoma shall pay to City a fee equal to 5% of the gross revenues of AT&T Oklahoma and its affiliates collected from each subscriber to AT&T Oklahoma's IP-enabled Video Services product, and 5% of the portion of gross revenues from advertising which are defined in subsection 3(A)(3), below; the fee ("IP-enabled Video Services Provider Fee") may be identified and passed through on any subscriber bill by AT&T Oklahoma, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each quarter.



- (1) For purposes of this Agreement, gross revenues are limited to the following:
  - (i) recurring charges for IP-enabled Video Services;
  - (ii) event-based charges for IP-enabled Video Services, including but not limited to pay-per-view and video-on-demand charges;
  - (iii) rental of set top boxes and other IP-enabled Video Services equipment;
  - (iv) service charges related to the provision of IP-enabled Video Services, including, but not limited to, activation, installation, and repair; and
  - (v) administrative charges related to the provision of IP-enabled Video Services, including, but not limited to, service order and service termination charges;
  - (vi) amounts billed to IP-enabled Video Services subscribers to recover the IP-enabled Video Services Provider Fee authorized by this section.
  
- (2) For purposes of this Agreement, gross revenues do not include:
  - (i) Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
  - (ii) late payment fees;
  - (iii) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of IP-enabled Video Services and not for the provisioning of any other service provided by AT&T Oklahoma or its affiliates;
  - (iv) amounts billed to IP-enabled Video Services subscribers to recover taxes, fees or surcharges imposed upon IP-enabled Video Services subscribers in connection with the provision of IP-enabled Video Services, other than the IP-enabled Video Services Provider Fee authorized by this section;
  - (v) revenue from the sale of capital assets or surplus equipment; or
  - (vi) charges, other than those described in subsection (1), that are aggregated or bundled with amounts billed to IP-enabled Video Services subscribers.
  
- (3) "Gross Revenues" which are subject to the IP-enabled Video Services Provider Fee paid by AT&T Oklahoma additionally include a pro rata portion of all revenue collected by AT&T Oklahoma pursuant to compensation arrangements for advertising (less any commissions AT&T



receives from any third parties for advertising) and home-shopping sales derived from the operation of AT&T Oklahoma's IP-enabled Video Service within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(4) Bundling discounts shall be apportioned fairly among video and other services. AT&T Oklahoma shall not apportion revenue in such a manner as to avoid the IP-enabled Video Services Provider Fee.

(5) In the event that any other video services provider, including but not limited to a cable operator or open video service provider, enters into any agreement or makes any arrangement with City during the term of this Agreement whereby it is required or allowed to pay a fee to the City that is similar to the IP-enabled Video Services Provider Fee described herein, City shall allow AT&T Oklahoma to substitute the definition of "gross revenue" set forth in that agreement or arrangement for the definition of "gross revenue" set forth in this Agreement immediately upon request of AT&T Oklahoma.

(6) AT&T Oklahoma will grant the City the right to conduct reasonable audits to assure that the IP-enabled Video Services Provider Fee has been properly calculated.

(B) AT&T Oklahoma and City agree that the IP-enabled Video Services Provider Fee shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments except sales taxes, personal or real property taxes, ad valorem taxes, any fees levied for the purpose of funding the E9-1-1 system, and the two percent (2%) Telephone Inspection Fee currently being paid by AT&T Oklahoma;

(C) During the term of this Agreement, AT&T Oklahoma shall provide capacity for four "streams" or "channels" of noncommercial educational and governmental programming through AT&T Oklahoma's IP-enabled Video Service so long as City and educational institutions designated by the City provide any educational or governmental programming content in a standard digital format compatible with AT&T Oklahoma's IP-enabled video technology. City and educational institutions designated by the City shall provide this programming, and AT&T Oklahoma shall receive this programming, at AT&T Oklahoma's Point of Presence in downtown Oklahoma City. City and educational institutions designated by the City will be solely and individually responsible for their own programming content.



(D) AT&T Oklahoma shall work with the City to identify an economically and technically feasible process for providing an appropriate message through AT&T Oklahoma's IP-enabled Video Service in the event of a public safety emergency issued over the emergency alert system, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

(E) The parties agree to consult in the event that, after execution of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days of receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

In addition to the termination rights set forth above, AT&T Oklahoma shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days notice to the City, if (i) AT&T Oklahoma concludes in its reasonable business judgment that IP-enabled Video Service in the City is no longer technically, economically or financially consistent with AT&T Oklahoma's business objectives; (ii) Title VI obligations or any similar obligations are imposed on AT&T Oklahoma; or (iii) it becomes clear that the Company must offer or provide IP-enabled Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization.

(F) AT&T Oklahoma shall determine, in its sole discretion where in the City its facilities shall be constructed, operated, maintained, repaired and upgraded to provide, and where in the City to provide its IP-enabled Video Services. However, AT&T Oklahoma agrees that it will offer a competitive video service through the technology of its choosing, which may include, but is not limited to, direct-to-home satellite service, to all residential subscribers residing within its current local telephone service footprint within the boundaries of the City, subject to density, technical feasibility, and access limitations based on standard industry practice (e.g., density limitation of thirty (30) homes per mile, authorized access to private property/developments, etc.).



4. Obligations of City. City will not attempt to nor subject the provision of AT&T Oklahoma's IP-enabled Video Service to regulation under any cable television or broadband telecommunications franchise ordinance or similar ordinance(s). In addition:

(A) City agrees to subject the construction and installation of the facilities that will be used in whole or in part to provide AT&T Oklahoma's IP-enabled Video Service to the same process and review as it subjects the installation and construction of traditional telecommunications infrastructure;

(B) City agrees not to unreasonably block, restrict, or limit the construction and installation of facilities that will be used in whole or in part to provide AT&T Oklahoma's IP-enabled Video Service;

(C) City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with placement of communications or transmission facilities of any kind in a timely and prompt manner;

(D) AT&T Oklahoma represents and claims that its Video Service is not a "cable service" under Oklahoma or federal law. The City is entering into this agreement in reliance on this representation. In the event a court or federal agency or any governmental legislative body with jurisdiction rules or declares that AT&T Oklahoma's IP-enabled Video Service is a cable service, or that it is subject to the same laws and regulations as a cable service provider or cable television system, and if the ruling or declaration is effective and binding upon either the City or AT&T Oklahoma, this Agreement shall become null and void at the City's option.

5. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

6. Entire Agreement. This Agreement constitutes the entire agreement between City and AT&T Oklahoma with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and AT&T regarding the subject matter hereof.

7. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

8. Miscellaneous.

(A) AT&T Oklahoma and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.



(B) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(C) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

(D) This Agreement shall not be exclusive and the City expressly reserves the right to enter into similar agreements with any other company offering the same or similar video services at any time.

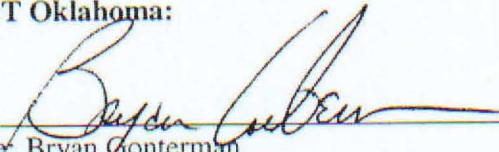
(E) The geographic area covered by this Agreement shall be the incorporated limits of the City of Oklahoma City, Oklahoma, as such area now exists or may be modified in the future by annexation or deannexation.

(F) The parties agree that either Oklahoma County District Court (7<sup>th</sup> Judicial District) or the United States District Court for the Western District of Oklahoma shall be the sole and exclusive forum for any judiciable disputes concerning this Agreement.

9. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the 20th day of December 2011 ( "Effective Date").

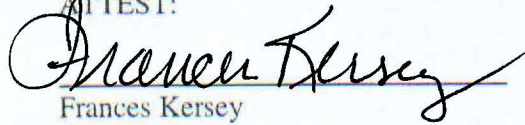
AT&T Oklahoma:

  
Name: Bryan Gontermann  
Title: President - Oklahoma

City:

APPROVED by the City Council of The City of Oklahoma City, Oklahoma, on  
the 20th day of Dec., 2011.

  
MAYOR

ATTEST:  
  
Frances Kersey  
City Clerk



REVIEWED <sup>for</sup> ~~and~~ form and legality.

  
Assistant Municipal Counselor