

## USE PRIVILEGE AGREEMENT

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF NUECES       §**

This use privilege agreement ("Agreement") is entered into by and between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, and Breckenridge Group Corpus Christi Phase II, LP. ("Permittee"), a Texas limited liability company, whose business address is 1301 S. Capital of Texas Highway, Suite B201, Austin, Texas, 78746.

In accordance with Article IX, Section 1, of the City's City Charter and in consideration of payment of Seventy Dollars (\$70.00) paid by Permittee (collectively referred to in this Agreement as "Permittee"), the receipt of which is acknowledged, the City has granted and conveyed, and by these presents does grant and convey to Permittee, for the term and upon the conditions stated in this Agreement, a use privilege for the right to install, operate, maintain, and remove an underground private fiber optic communications cable from the existing Phase 1 property (Oso River Estates Subdivision) located on the north side of Williams Drive and crossing approximately 70 linear feet of the Williams Drive public street right-of-way to the Phase 2 property (Oso River Estates Unit 2 Subdivision), located on the south side of Williams Drive, as shown in Exhibit "A" (plan and profile view). A Copy of Exhibit "A" is attached to this Agreement and incorporated into this Agreement by reference as if fully set out here in their entireties. The area in which the use privilege is granted to locate the Underground Fiber Optic Cable is referred to in this Agreement as the Use Privilege Area.

TO HAVE AND TO HOLD the same unto Permittee, their successors and assigns, together with the right under the conditions specified in this Agreement, to at any time enter upon the above described public right-of-way to maintain the Underground Fiber Optic Cable, and it is further understood that the use privilege granted by this Agreement is subject to the Permittee' compliance at all times with the following conditions:

- A. This Agreement, and the rights granted under the Agreement, may be revoked at any time by the City upon providing the Permittee not less than 60 days notice in writing by the City's City Manager, or his designee ("City Manager"). In the event of a revocation by the City Manager or earlier termination of this Agreement by either party, no portion of any payment made under this Agreement is refundable to the Permittee.
  
- B. This Agreement is for a term of one (1) year. At the end of the initial term, this Agreement renews automatically for up to four (4) successive annual terms upon the payment of \$70.00 by the Permittee, unless Permittee, or the City provides written notice of intent not to renew to the non-terminating parties at least 60 days before the end of any annual term.

access to the Use Privilege Area to perform an assessment, make repairs, or take any other action deemed necessary by the City. Determination of the extent of damage and repairs necessary to restore the utility line(s) shall be made by the City Manager. All costs of the City associated with said damage and repair, including labor and materials, shall be paid by Permittee within 30 days of the City's invoice.

- L. Should construction become necessary near existing water or wastewater lines, Permittee shall take every precaution not to disturb the soil surrounding any such lines, including all thrust blocks.
- M. If any approved work is conducted near any existing water main, it shall be done under the inspection of a City inspector at a daily rate of three-hundred ten dollars and thirty-five cents (\$310.35) for each day spent inspecting construction, installation, maintenance, repair, removal, or replacement in the Use Privilege Area. A half-day, being four hours or more of work time by the City inspector, constitutes a whole working day for purposes of calculation. Any time in excess of eight hours a day, or on Saturday, Sunday or holidays, shall be calculated at a daily rate of fifty-eight dollars and eighteen cents (\$58.18) per hour. Any assessed inspection fees shall be paid by the Permittee to the appropriate City department within 30 days of the City's invoice. These amounts will be adjusted annually each year on August 1 to reflect any pay increases that may be attributable to the rates charged.
- N. At any and all times Permittee shall be solely responsible for the repair and maintenance of the Wastewater Line and Use Privilege Area, including any costs associated with damage occurring due to natural weather elements/occurrences or man-made forces. Should damage occur to the Wastewater Line or Use Privilege Area, regardless of the type of damage, Permittee shall immediately repair the damage upon notice by the City. Failure to so repair terminates this Agreement immediately without any further action needed on the part of the City.
- O. Permittee shall repair, or cause to be repaired, any damage to driveways, culverts, head walls, landscaping, sidewalks, curbs, gutters, and any other structure, public or private, resulting from or caused by reason of construction, installation, maintenance, repair, removal, replacement or operation of the Underground Fiber Optic Cable and Use Privilege Area.
- P. If a trench, pit, or other excavation is required during approved construction, no trenches, pits, or other excavation, other than bore pits, shall be left open overnight, except as specifically authorized by the City's Director of Development Services and City's Engineer. Bore pits are not allowed open for a period of longer than 14 calendar days, regardless of location. All trenches, pits, or other excavations, other than bore pits, shall be backfilled by the Permittee promptly and in accordance with current City standards and specifications and as per the City inspector's request. All trenches, pits, and other excavations, including bore pits, shall be barricaded by the Permittee in

669-8344), and any other required agency or authority. Additionally, at least 48 hours prior to beginning any approved construction, Permittee shall give notice and verify depth and location of communication lines or communication fiber optic cables, whichever is applicable, to the following:

- City Utility Departments, including Water, Storm Water, Wastewater and Gas;
- American Electric Power (AEP);
- American Telephone and Telegraph (AT&T);
- CenturyTel;
- Time Warner;
- Grande Communications; and
- Any and all other certified telecommunications providers.

A City inspector may request a utility line be uncovered to verify its depth or location.

- I. Any construction process and use of the Use Privilege Area by Permittee shall not interfere with the construction, installation, operation, maintenance, repair, removal or replacement by the City or any of its agents, contractors, or franchisees of any existing or future proposed sidewalks, utility lines, or other uses. If the City or any franchisee with utilities currently located in said public right-of-way needs access to the right-of-way, Permittee shall pay for removing or relocating the Underground Fiber Optic Cable in the Use Privilege Area to allow access to utility lines for maintenance, repair, removal, or replacement of the utility lines. The Permittee shall repair the Use Privilege Area to its original condition or cease to use the Use Privilege Area, at which time this AGREEMENT terminates immediately.
- J. Traffic Engineer requirements pertaining to this Agreement, if applicable in context:
  1. At least 48 hours prior to commencing approved construction, the Permittee shall file and obtain approval for a traffic control plan with the City's Traffic Engineer. No closure or barricading of a public right-of-way or any portion of a public right-of-way may occur before approval of the traffic control plan and, if applicable, approval of a detour or barricade plan has been obtained from the City's Traffic Engineer.
  2. Should Permittee require a trench, pit, or similar excavation be dug during approved construction, the Permittee shall file and obtain approval for barricading said trench, pit, or excavation in accordance with the Texas Manual on Uniform Traffic Control Devices from the City's Traffic Engineer. [See paragraph "P" of this Agreement for additional requirements regarding trenches, pits and similar excavations.]
- K. If, as determined by the City Manager, damage occurs to any gas, water, storm water, or wastewater line, Permittee shall allow the City immediate

- C. This Agreement may not be assigned by Permittee, either individually or collectively, without the City Manager's prior written consent. Any appropriately approved assignment of this Agreement shall cause all terms and conditions of this Agreement to become binding upon said successor, or assign.
- D. The Permittee shall acquire and maintain at all times for the term of this Agreement insurance coverages pertaining to the Use Privilege Area granted under this Agreement and the activities authorized by this Agreement. The types of required insurance coverages must be in the minimum amounts set forth in the attached Exhibit "B," the substantive content of Exhibit "B" being incorporated by reference into this Agreement as if fully set out here in its entirety. The insurance policies must name the City as an additional insured and may not be canceled, renewed, or materially changed by Permittee unless at least ten (10) days advance written notice has been provided to the City. Upon the City Manager's written request, Permittee shall provide copies of all requested insurance policies to the City's City Attorney. Notwithstanding the foregoing and the content of Exhibit "B", Permittee shall only be required to acquire and maintain workers' compensation insurance to the extent that Permittee has employees.
- E. Should construction be deemed necessary by Permittee in the Use Privilege Area, construction plans and specifications for all proposed work shall be submitted in advance by the Permittee to the City's City Engineer for approval prior to beginning the construction process. The plans must show the depth, and location of the proposed construction and distance from existing water, storm water, wastewater, and gas lines. The Permittee shall also comply with any other laws, rules, regulations, and ordinances applicable to construction in the City and in the public right-of-way, including obtaining all required permits.
- F. Prior to the start of any approved construction, Permittee shall require every contractor and subcontractor to provide a Certificate of Insurance reflecting insurance in coverage amounts as set forth in Exhibit "B", and that all subcontractors of Aspen Heights Construction, LLC. shall be required to carry worker's comp coverage. Additionally, Permittee shall require their contractors and subcontractors to indemnify the City, its officers, officials, employees, representatives, agents, licensees, and invitees in the same manner that Permittee has provided indemnification to the City pursuant to this Agreement.
- G. Permittee shall provide all necessary and proper safety devices so as to prevent injuries or accidents in the Use Privilege Area, in as much as possible.
- H. At least 48 hours prior to beginning any approved construction, Permittee shall contact 1-800-DIG-TESS and the Lone Star Notification Center (1-800-



**CITY OF CORPUS CHRISTI  
DISCLOSURE OF INTERESTS**

City of Corpus Christi ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA".

FIRST NAME: Breckenridge Group Corpus Christi Phase II, LP

STREET: 1301 S Capital of TX Hwy Suite B201 CITY: Austin, TX ZIP: 78746

FIRM IS:  1. Corporation  2. Partnership  3. Sole Owner  4. Association  Other \_\_\_\_\_

**DISCLOSURE QUESTIONS**

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Job Title and City Department (if known)
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Title
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Board, Commission, or Committee
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 35 or more of the ownership in the above named "firm".

Name	Consultant
_____	_____
_____	_____

**CERTIFICATE**

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Greg Henry  
(Type or Print)

Title: Manager of General Partner

Signature of Certifying Person: \_\_\_\_\_

Date: 3/4/15

- H. It is agreed that Permittee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2014 ins req.

Development Services – Installation of Fiber-Optic Cable Permits

11/13/2014 ds Risk Mgmt.

- B. Permittee shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Permittee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Permittee shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Permittee shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Management  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

- D. **Permittee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
  - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Successful Bidder shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Permittee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Permittee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Permittee to stop work hereunder, and/or withhold any payment(s) which become due to Permittee hereunder until Permittee demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Permittee may be held responsible for payments of damages to persons or property resulting from Permittee's or its subcontractor's performance of the work covered under this agreement.

**ATTACHMENT  
EXHIBIT B**

**INSURANCE REQUIREMENTS**

**PERMITTEE'S LIABILITY INSURANCE**

- A. Permittee shall not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Permittee must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Permittee shall furnish to the Risk Manager or designee and Director of Development Services, two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. The City must be listed as an additional insured for the General Liability policy, and a waiver of subrogation is required on all applicable policies.

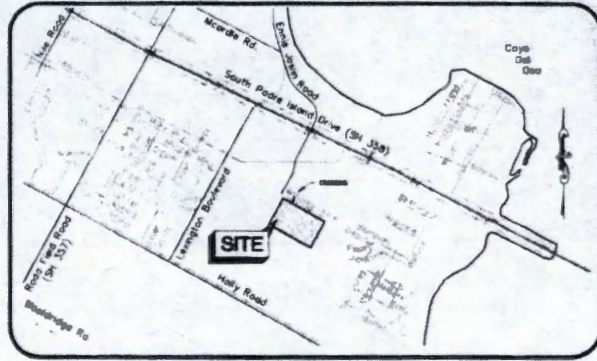
<b>TYPE OF INSURANCE</b>	<b>MINIMUM INSURANCE COVERAGE</b>
30-Day Notice of Cancellation required on all certificates or by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence / aggregate
Commercial General Liability including: 1. Broad Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Permittees 7. Pollution/Environmental Impairment	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
BUSINESS AUTOMOBILE LIABILITY 1. Owned 2. Hired & Non-owned	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION	WHICH COMPLIES WITH THE TEXAS WORKERS' COMPENSATION ACT AND PARAGRAPH II OF THIS EXHIBIT.
EMPLOYER'S LIABILITY	\$500,000 / \$500,000 / \$500,000

- C. In the event of accidents of any kind related to this project, Permittee shall furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of the accident.

**II. ADDITIONAL REQUIREMENTS**

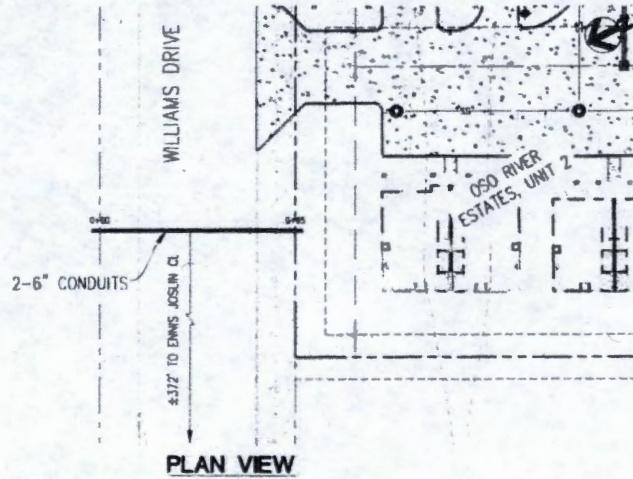
- A. Permittee must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met.



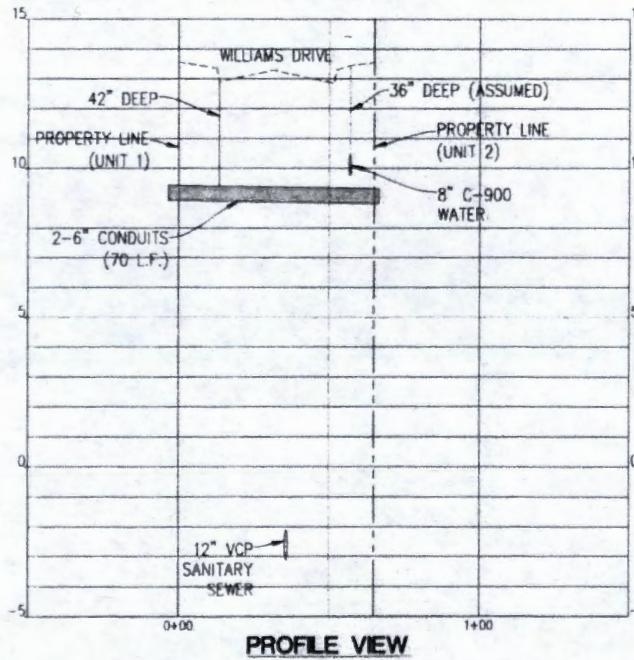


LOCATION MAP  
N.T.S.

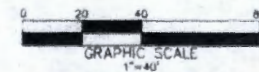
OSO RIVER  
ESTATES, UNIT 1



PLAN VIEW



PROFILE VIEW



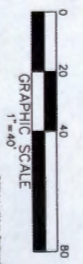
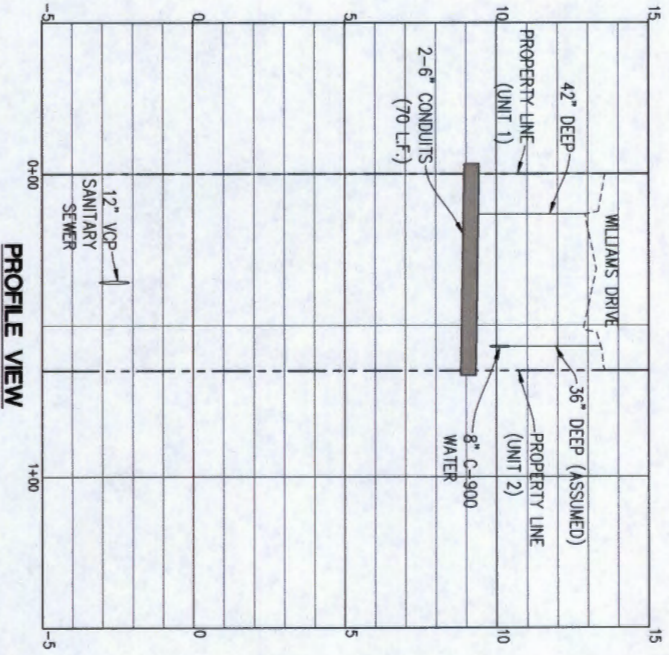
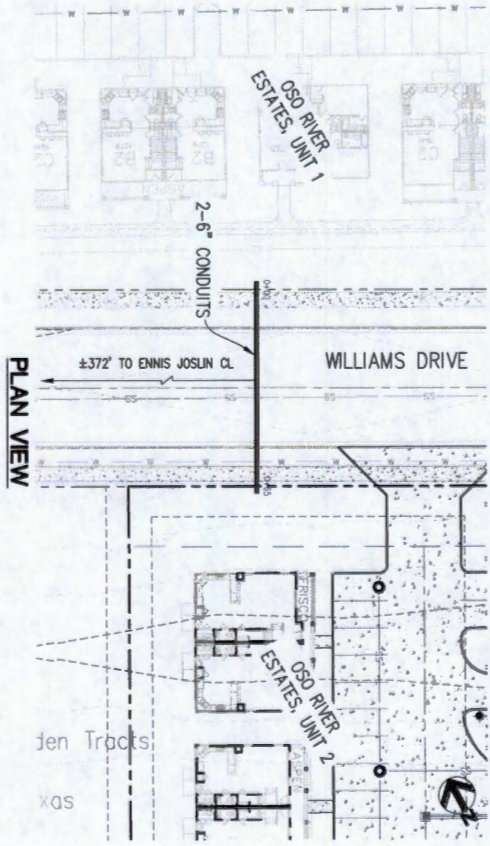
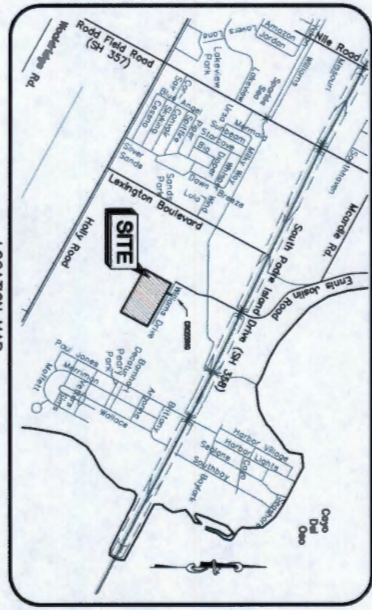
<p><b>URBAN ENGINEERING</b></p> <p>3825 TAMU DRIVE, SUITE 200 HOUSTON, TEXAS 77006 713.288.9900</p>	<p><b>DATA CONDUIT EXHIBIT</b> <b>WILLIAMS DRIVE CROSSING</b> TAMU-CC STUDENT HOUSING OSO RIVER ESTATES, PHASE 2 CORPUS CHRISTI, TEXAS</p>	<p>DATE: AUG 2014</p> <p>DESIGNED BY: MCT</p> <p>CHECKED BY: MCT</p> <p>DATE: APR 2014</p> <p>DESIGNED BY: MCT</p> <p>CHECKED BY: MCT</p> <p>DATE: APR 2014</p>
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3. Preparation of this drawing is the responsibility of the engineer. The engineer shall be responsible for the accuracy of the information shown on this drawing. The engineer shall be responsible for the accuracy of the information shown on this drawing.



LOCATION MAP  
N.T.S.

EXHIBIT A-1



DESIGN BY JAMES ENGINEERING

SHEET  
OF 1  
JOB NO.  
008956-0402



**DATA CONDUIT EXHIBIT  
WILLIAMS DRIVE CROSSING**

TAMU-CC STUDENT HOUSING  
OSO RIVER ESTATES, PHASE 2  
CORPUS CHRISTI, TEXAS

FOR PRELIMINARY REVIEW ONLY  
NOT FOR CONSTRUCTION  
August 29, 2014  
MURRAY F. HARRISON, P.E.  
TEXAS REG. NO. 78188

REV.	BY	DATE	DESCRIPTION

DRAWN: MCY  
DESIGNED: MCY  
CHECKED: MFH  
DATE: AUG 2014

EXECUTED IN DUPLICATE this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ACCEPTED BY:

Greg Henry  
Greg Henry, Manager of General Partner  
Breckenridge Group Corpus Christi Phase II, LP

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on March 2, 2015,  
by Greg Henry, Manager of Gen. Partner of Breckenridge Group Corpus Christi  
Phase II, LP, a Texas limited partnership, on behalf of said company.



Jenni Simmons  
Notary Public's Signature

ATTEST:

CITY OF CORPUS CHRISTI

\_\_\_\_\_  
Rebecca Huerta  
City Secretary

\_\_\_\_\_  
Daniel M. Grimsbo, P.E.  
Director, Development Services Department

APPROVED AS TO LEGAL FORM: \_\_\_\_\_, 2015

\_\_\_\_\_  
Julian Grant  
Sr. Assistant City Attorney  
for the City Attorney

**ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, OR ACTIONS.**

- T. All signatories signing this Agreement warrant and guarantee that they have the authority to act on behalf of the entity represented and make this Agreement binding and enforceable by their signatures.
- U. Unless otherwise stated in this Agreement, any notice required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested to the following addresses:

**If to Permittee:** Breckenridge Group Corpus Christi Phase II, LP.  
1301 S Capital of Texas Highway, Suite B201  
Austin, Texas, 78746

**If to the City:** City of Corpus Christi  
Attn: Director, Development Services Department  
P. O. Box 9277  
Corpus Christi, TX 78469-9277

Any party shall, by notice to the others in accordance with the provisions of this paragraph, specify a different address or addressee for notice purposes within 10 days of any address change.

- V. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created pursuant to this Agreement are performable in Nueces County, Texas. Venue for all actions arising from, out of, or related to this Agreement must be brought in Nueces County, Texas.
- W. The Permittee further agree, in compliance with the City of Corpus Christi Ordinance No. 17112, to complete, as part of this Agreement, the "Disclosure of Interests" form attached to this Agreement as Exhibit "C." Completed versions of Exhibit "C" by Permittee form a part of this Agreement and are incorporated by reference into this Agreement as if set out here in their entireties.
- X. This instrument, including exhibits, constitutes the entire agreement between the City and the Permittee, and no prior written, oral, or contemporaneous promises, warranties, or representations shall be binding upon any parties. This Agreement may only be amended by written instrument signed by the City and Permittee and approved as required by City law.

accordance with the Texas Manual on Uniform Traffic Control Devices and as approved by the City's Traffic Engineer. [See paragraph "J.2." for additional requirements pertaining to trenches, pits, and other excavations.]

- Q. If backfilling becomes necessary, all backfill, specifically including that in and around existing utilities, shall be made by Permittee according to current City standards and specifications and as required by a City inspector.
- R. Use of the Underground Fiber Optic Cable authorized by this Agreement is strictly limited to serving Phase 1 (Oso River Estates) and Phase 2 (Oso River Estates Unit 2) properties in the Use Privilege Area. Permittee shall not provide, nor permit anyone else to provide or receive, service through said Underground Fiber Optic Cable or at any facilities within the City other than the properties specifically included in this Agreement without first obtaining a franchise from the City.

#### **S. INDEMNIFICATION.**

**PERMITTEE, THEIR RESPECTIVE OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, AND LICENSEES, (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SUBPARAGRAPH AS "INDEMNITORS") SHALL FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, OFFICIALS, EMPLOYEES, REPRESENTATIVES, AGENTS, LICENSEES, AND INVITEES, ("INDEMNITEES"), AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, AND ACTIONS OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES, (INCLUDING, WITHOUT LIMITATION ON THE FOREGOING, WORKERS' COMPENSATION AND DEATH CLAIMS), PROPERTY LOSS, OR DAMAGE OF ANY KIND WHATSOEVER, WHICH ARISE OUT OF OR ARE IN ANY MANNER CONNECTED WITH, OR ARE CLAIMED TO ARISE OUT OF OR BE IN ANY MANNER CONNECTED WITH, THE USE OF THE PROPERTY UNDER THIS AGREEMENT, INCLUDING SAID INJURY, LOSS OR DAMAGE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES OR ANY OF THEM INDIVIDUALLY. INDEMNITORS SHALL, AT INDEMNITORS' OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO INDEMNITEES, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND**