

THE STATE OF TEXAS                   §  
   §                   **KNOW ALL PEOPLE BY THESE PRESENTS**  
COUNTY OF BURNET                   §

**Utility Relocation Agreement (Electric and Communications)**

**I. Purpose**

The purpose of this Agreement is to provide a memorialization of the terms and conditions by which: (i) the City of Burnet, a home rule city organized under the Constitution of the State of Texas (sometimes hereafter referred to as “City”) shall relocate certain electric utility facilities serving the First Baptist Church Burnet a 501(c) not for profit religious organization (sometime hereinafter referred to as “Church”). The Parties acknowledge and agree the mutual promises and covenants contain herein are legally sufficient consideration to cause this Agreement to be a legally binding contract.

**II. The Parties.**

The Parties to this Agreement, and addresses for notice purposes, are as follows:

“CITY”  
City of Burnet, Texas  
Attn City Manager  
P.O. Box 1369  
1001 Buchanan Drive, Suite 4  
Burnet, Texas 78611

“CHURCH”  
First Baptist Church Burnet  
Attn  
P.O. Box 310  
108 S Vandever Street  
Burnet, Texas 78611

**III. Background**

A new city hall is being constructed on the block that fronts Jackson Street just south of the Church’s new church building project. The City shall underground the electric facilities serving the new city hall. The Church agrees to authorize the City to underground the electric facilities serving the Church.

**IV. Scope of Work.**

The work shall consist of removal of XXX linear feet of aerial electric utility lines, poles, and hardware (hereinafter the “*aerial infrastructure*”); and replacing the remove electric utility line with an underground line placed in conduit (hereinafter the “*underground infrastructure*”). The location and specifications for the work is shown on **Exhibit “A”**.

The shall be responsible for the removing the aerial infrastructure from the site and properly disposing of same. Moreover, the City shall be responsible to complete the installation of underground infrastructure so that it fully ready to serve the new church building (hereinafter “final completion”)

**V. Costs**

The Costs consist of two components: installation of conduit and line relocation by third party communication providers.

- (1) Third Party Relocation. The third-party costs for relocation of communication lines is \$9,771.47. Payment of this cost by the Church shall be due at the time of execution of this agreement.
- (2) Conduit. City shall purchase the conduit and install said conduit utilizing in-house labor. The total labor costs is estimated to not exceed \$49,900. The City shall not exceed the estimated without written approval by the Church. Should

Church not approve an adjusted estimated costs City may terminate this project by written notice.

The City shall reimburse the city for all material, labor and installation charge within 30 days of receipt of an invoice.

## VI. Miscellaneous

- (A) Additional Instruments and Mutual Assistance. City and Church will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions
- (B) Amendments. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment.
- (C) Binding Obligation. This Agreement and all covenants, agreements, provisions and conditions hereto, shall be binding upon and inure to the benefit of the respective Parties hereto, their legal representatives, successors or assigns upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Church warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same, as provided herein.
- (D) Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of the Agreement.
- (E) Enforcement. Enforcement of this Agreement shall be limited to the terms and conditions of this Section VI (F)
  - (1) The failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within thirty (30) days of receiving written notice from the other Party; or if the performance of the requirement, duty, or covenant within 30 days is not reasonably practical due to Force Majeure, or other event beyond the non-performing Party's reasonable control; and in such case it shall be considered an act of Default if the failure to perform is uncured within such time as may be reasonable to cure the failure to perform.
  - (2) A Default by either Party shall entitled the non-defaulting Party to enforce its rights under this Agreement through the equitable relief of specific performance, restraining orders or injunctions without the necessity of proof of inadequacy of legal remedies or irreparable harm.
  - (3) Save and except the City's right to collect its cost as provided in Article V., above, in no event shall either Party be entitled to monatary damages, whether actual, consequential, special, punitive (or exemplary), or any

similar damages against the other Party for any Default under this Agreement.

- (4) If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable and necessary attorney's fees and court and other costs.
- (F) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Burnet, Texas.
- (G) Exhibits and Attachments. All Exhibits and Attachments referenced in this Agreement are attached hereto and incorporated herein for all purposes. Exhibits to this Agreement are as follows:  
**Exhibit "A": Project location and scope.**
- (H) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, pandemic, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated Party and delays caused by the other Party, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.
- (I) Governing Law. This Agreement shall be governed by the laws of the State of Texas, without regard to choose-of-law rules of any jurisdiction. and the venue for any action concerning this Agreement shall be in Burnet County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of a court of competent jurisdiction in said County.
- (J) Individuals Not Liable. No director, officer, agent or employee of the City shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution thereof
- (K) Notice. Any notice given to either Party under the terms of this Agreement shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as stated in Article II; or to such other place as each Party may hereafter designate in writing forwarded in like manner for any other notice.

- (L) Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- (M) Sovereign Immunity. The Parties agree that the work the City shall perform under this Agreement is a governmental function; and, nothing in this Agreement shall be determined to waive the City's sovereign immunity.
- (N) Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- (O) Waivers. No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

Signature page follows.

Executed this \_\_\_\_\_ day of September, 2024.

**City**  
**City of Burnet**

**Church**  
**First Baptist Church Burnet**

**By:** \_\_\_\_\_  
**David Vaugh, City Manager**

**By:** \_\_\_\_\_

**Attest:**

**By:** \_\_\_\_\_  
**Maria Gonzales, City Secretary**

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