

AGREEMENT

THIS AGREEMENT is made and entered into this **22** day of **June**, 2007, by and between
ATT and, the City of Wichita, a municipal corporation.

WITNESSETH:

WHEREAS, City of Wichita is currently designing a Public Improvement Project for reconstruction of Waterman Street, between Main and Washington; and

WHEREAS, ATT has facilities present in City of Wichita Right-of-Way, in Waterman at the Alley located between Broadway and Market, and by franchise agreement must relocate said facilities and pay for said relocation when in conflict with Public Improvement Projects within Right-of-Way;

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. ATT requests the City of Wichita to allow facilities to remain in place and, instead, allow resolution of facilities' conflict through City's employment of alternate design of 48" Waterline in this specified area, to be accomplished in the following manner:

a) City of Wichita will design placement of the waterline to lay below the existing ATT facilities, said facilities described as: Two Manholes and Two Duct Banks running north and south in the alley between Broadway and Market, at the alley's intersection with Waterman.

b) City of Wichita will utilize trenchless technology to bore and case under said facilities.

c) ATT has reviewed the construction specifications and instructions relative to the bore and case, the depth and location of the bore, the placement of the waterline, and the present location and size of ATT's facilities. Acceptance of this agreement signifies acceptance as to the correctness and appropriateness of said information.

d) ATT will provide adequate and appropriate support, shielding, and any additional engineering or technology necessary to maintain and protect structural integrity of their facilities.

e) City of Wichita will provide Two weeks notice as to City's intent to begin construction of the waterline. Such notification will be written and provided to a local representative designated by ATT; said representative's name and contact information to be provided to City of Wichita on this agreement.

f) ATT agrees to have adequate and appropriate support, shielding, and any additional engineering or technology necessary to maintain and protect structural integrity of their facilities in place by the date provided by notification as stated in e) above. Any increased cost due to delay of City of Wichita's construction activity caused by ATT's failure to accomplish adequate and appropriate support, shielding, and any additional engineering or technology necessary to maintain and protect structural integrity of their facilities by the stated date will be the financial responsibility of ATT.

g) ATT will be responsible for all additional costs to the waterline project resulting from the bore and case in addition to any associated costs including, but not limited to: materials, labor, professional services, supplies, and/or construction delay. Current estimated costs for the bore, case, and associated costs are \$75,000.

h) When construction activity is completed, City of Wichita will submit to ATT an invoice for the actual cost of the bore, case and associated costs including, but not limited to: materials, labor, professional services, supplies, and/or construction delay. ATT will then have 30 days from receipt of invoice to pay City of Wichita the amount due.

i) ATT agrees to provide adequate and appropriate support, shielding, and any additional engineering or technology necessary to maintain and protect structural integrity of their facilities in the event that future repairs to the water line, reinforced concrete box culvert, and/or common duct bank located in Waterman at the intersection of said alley require construction activity in an area sufficiently proximal to their facilities to require such attention.

j) ATT acknowledges that due to public and safety concerns, that necessary repair to said waterline, reinforced concrete box culvert, and/or common duct bank may not allow sufficient time for ATT to provide adequate and appropriate support, shielding, and any additional engineering or technology necessary to maintain and protect structural integrity of their facilities and acknowledges that City of Wichita will not be held liable for any damages to facilities resulting from said repairs.

k) ATT acknowledges that any increased cost due to future repair of said waterline, reinforced concrete box culvert, and/or common duct bank due to delay in or method of construction activity, materials, labor, professional services, and/or supplies necessary as a result of the proximity of said repairs to ATT's facilities will be the responsibility of ATT.

l) ATT agrees to indemnify and hold harmless City of Wichita from any and all claims for damage to the ATT facilities in Waterman at the intersection of said alley as a result of the bore and casing of the waterline and/or construction of the reinforced concrete box culvert and/or common duct bank; however, this agreement is not intended to discount the expectation and responsibility of City of Wichita's contractor to utilize and employ acceptable standards and practices common to construction.

Executed this 22-day of Jan, , 2007

City of Wichita

ATT
("CUSTOMER")

By: _____

By: James Schenk

Title: _____

Title: Mgr. Engineering Design

Attest: _____

Attest: James C. Schenk

Approved as to form
Gary E. Rebenstorf

Gary E. Rebenstorf, City Attorney

Common Duct Bank Agreement

City of Wichita, hereinafter referred to as "City", hereby agrees with WESTAR ENERGY, INC., a Kansas corporation hereinafter referred to as "CUSTOMER", that City will provide the labor, equipment, materials and supplies to design and construct a concrete encased duct bank to be placed in Waterman Street Right-of-Way, generally described as being between Main Street and Washington Street and described more particularly below, for shared occupancy, access and use of electric power and communications according to the terms and conditions set forth below.

1. The parties agree that it is necessary for the CUSTOMER to comply with NESC and CUSTOMER standards and requirements for underground placement of utilities, and that use of a common duct bank will be suitable and desirable for the compliance of this requirement in the following location:

In Waterman Street, beginning from the east right-of-way line of Main Street and east through the intersection of Washington Avenue to the project limits; a distance of approximately 3100 linear feet.

2. CUSTOMER will be liable for a proportionate amount of the final cost of the duct bank design and construction, relative to the size of the duct bank cross-sectional area to be occupied by CUSTOMER. CUSTOMER has requested and been allotted 5.08 square feet of the total 7.38 square feet of the duct bank cross-sectional area; an amount equal to 68.83% of the total duct bank cross-sectional area.

IN ADDITION, the CUSTOMER has requested and will be liable for the cost of eight manholes and approximately 1301 linear feet of 6" PVC conduit necessary for connection to CUSTOMER'S existing facilities.

Design of the duct bank includes and is based on the following:

- a) CUSTOMER will ultimately be sole owner and administrator of the 68.83% of the cross-section shown in the attached drawing.
- b) Six 6" conduits are located within the CUSTOMER'S 68.83% cross-section
- c) Six additional 4" conduits are located in the remaining 31.17% cross-section
- d) CUSTOMER'S access to the conduits within the duct bank will be through the eight manholes shown in the attached drawing.
- e) CUSTOMER'S conduits will be closed in the other eight manholes as shown in the attached drawing.
- f) The six additional 4" conduits located in the remaining 31.17% cross-section will be closed in the CUSTOMER'S eight manholes shown in the attached drawing.
- g) The additional 1301 linear feet of 6" PVC conduit will not be part of the common duct bank and will be for CUSTOMER use only.

Final cost to the CUSTOMER will be based on the actual labor, equipment, supplies, and materials to design and construct the duct bank, manholes and conduit, but will not exceed the bid amount without prior CUSTOMER approval for all change orders and related expenses. All construction will comply with applicable standards, specifications and building codes. The current estimated cost of the duct bank, manholes and conduit together will be a total of \$1.1 million. CUSTOMER will be responsible for 68.83% of the duct bank cost AND for the total cost of the eight manholes and 1301 linear feet of conduit; this combined amount is currently estimated to be \$800,000.00. Customer has the right to void this agreement if the bid price exceeds \$800,000.00.

3. CUSTOMER will make payment for its portion of the actual costs of the above-described work based on 68.83% of the duct bank costs and 100% of the 8 manholes and 1301 linear feet of conduit. All actual costs will be provided by invoice after completion of the work. The current estimate of \$1.1 million for all work described is based on successful bidding of the project by April 1, 2007.

4. City expects to begin work on the duct bank on or around May 15, 2007 and estimates completion of the duct bank on or around March 1, 2008. However, City may adjust or extend this work schedule as weather conditions require.

5. CUSTOMER will regularly inspect construction/installation of all duct banks, conduits and manholes to insure proper installation. Customer must approve all completed construction before final payment will be made; HOWEVER, Customer will not unduly or unreasonably withhold such approval and shall base said approval on acceptable standards and practices common to construction.

6. When the duct bank, manhole and conduit construction are complete and have passed customer inspection, City will submit to CUSTOMER an invoice for the appropriate costs. CUSTOMER will then have 30 days from receipt of the invoice to pay City the amount due.

7. At the time of payment, CUSTOMER will be the sole owner and administrator of 68.83% of the common duct bank, specifically (six) 6" conduits, spacers, encasement, and eight manholes, in addition to the 1301 linear feet of 6" conduit. CUSTOMER will be responsible for any requirements or procedures necessitated by local, state, and federal agencies, and/or Kansas One-Call or its equivalent.

8. CUSTOMER agrees future maintenance and/or repairs may be required to the common duct bank. CUSTOMER will be responsible for the cost and repair of any portion of the 68.83% owned by the CUSTOMER, specifically (six) 6" conduits, spacers, encasement, and eight manholes, in addition to the 1301 linear feet of 6" conduit.

9. CUSTOMER has been provided opportunity to comment and review the general intent and design of the duct bank, manholes, and conduit; CUSTOMER is provided a copy of the design as an attachment to this agreement. CUSTOMER agrees to indemnify, hold harmless and defend City from any claims, costs, expenses or judgments arising from or related to CUSTOMER's negligent use of the duct bank.

10. The duration of this agreement shall be as long as the above described duct bank exists and is in use by CUSTOMER.

Made effective this day of , 2007

City of Wichita

Westar Energy, Inc
("CUSTOMER")

By:

By: Carolyn L. Williams

Title: _____

Title: VP Distribution Power Delivery

Attest: _____

Attest: _____

Approved as to form
Mary E Rebenstorf
Mary E Rebenstorf, City Attorney

Common Duct Bank Agreement

This Common Duct Bank Agreement ("Agreement") is dated May ~~21~~ 2007 and is by and between the **City of Wichita, Kansas**, hereinafter referred to as "**CITY**", hereby agrees with **Cox Communications, Kansas, L.L.C.**, hereinafter referred to as "**CUSTOMER**", that **CITY** will provide the labor, equipment, materials and supplies to design and construct a concrete encased duct bank placed in Waterman Street Right-of-Way, generally described as being between Main Street and Washington Street and described more particularly below, for shared occupancy of power and communications according to the terms and conditions set forth below.

1. The parties agree that it is necessary for **CUSTOMER** to comply with requirements for underground placement of utilities and that use of a common duct bank will be suitable and desirable for the compliance of this requirement in the following location:

In Waterman Street, beginning from the east right-of-way line of Main Street and east through the intersection of Washington Avenue to the project limits; a distance of approximately 3,100 linear feet AND that **CUSTOMER** will have the right to use and shall be located in the portion of the common duct bank beginning from the east right-of-way line of Main Street and east to Rock Island Street; a distance of approximately 2,661 linear feet.

2. **CUSTOMER** will be liable for a proportionate amount of the final cost of the duct bank design and construction, relative to the size of the duct bank cross-sectional area to be occupied by **CUSTOMER** for the length of the above-described 2,661 linear feet provided that in no event shall **CUSTOMER'S** proportionate share exceed \$170,000.00. **CUSTOMER** has requested and been allotted 0.84 square feet of the total 7.38 square feet of the duct bank cross-sectional area; an amount equal to 11.38% of the total duct bank cross-sectional area. The proportionate amount for which the **CUSTOMER** will be liable equates to 10% of the entire duct bank design and construction cost not to exceed \$170,000.00.

IN ADDITION, **CUSTOMER** has requested and will be liable for the purchase price and installation cost of approximately 842 linear feet of 4" PVC conduit necessary for connection to **CUSTOMER'S** existing facilities and the purchase price and installation cost for seven manholes to be purchased and supplied by **CUSTOMER**.

Design of the duct bank includes and is based on the following:

- a) **CUSTOMER** will ultimately be sole owner and administrator of the 11.38% of the cross-section shown in the attached drawing. Upon completion of construction and payment of its portion, **CUSTOMER** will obtain and have fee simple title to the two (2) four (4) inch conduits shown in the cross-section plus the "842 feet of 4" PVC conduit.
- b) Two 4" conduits are located within **CUSTOMER'S** 11.38% cross-section

- c) **CUSTOMER'S** access to **CUSTOMER'S** two conduits will be through the seven manholes shown in the attached drawing.
- d) **CUSTOMER'S** two conduits will be closed in the other nine manholes shown in the attached drawing.
- e) **CITY** is the sole owner and administrator of four conduits located in a portion of the remaining 88.62% cross-section.
- f) The Parties acknowledge that the **CITY** will access **CITY**-owned conduits through vaults and manholes owned and paid for by **CUSTOMER**. Accordingly, **CUSTOMER** is restricting access to the **CITY** conduit to third parties, and the parties agree that such restriction is reasonable. **CUSTOMER** grants **CITY** access to **CITY'S** four conduits and also allows the four conduits to be open through the seven manholes shown in the attached drawing. This right to access conduit openings is granted only for so long as the conduits contain **CITY**-owned fiber or cabling. The City shall not allow any third party to use the four conduits without the express written consent of **CUSTOMER** which **CUSTOMER** may withhold in its sole discretion. Upon the **CITY** vacating the four conduits, then said conduit(s) will be closed by **CITY**.
- g) The Parties acknowledge that Six (6) conduits which are owned by Westar (utility company) will run through the **CUSTOMER** owned vaults and the **CUSTOMER** manholes. The Westar conduits are not open to **CUSTOMER** or the **CITY**. The Westar conduits are located in a portion of the remaining 88.62% cross-section of the previously described 2,661 linear feet and will remain closed in **CUSTOMER'S** seven manholes.
- h) The additional 842 linear feet of 4" PVC conduit will not be part of the common duct bank and will be owned by and solely for **CUSTOMER'S** use.

Final cost to the **CUSTOMER** will be based on the actual labor, equipment, supplies, and materials to design and construct the duct bank, manholes and conduit not to exceed \$170,000.00. The **CITY** warrants and represents that all construction will comply with applicable standards, specifications and building codes. The current estimated cost of the duct bank, manholes and conduit together will be a total of \$1.1 million. **CUSTOMER** will be responsible for 10.00% of the entire duct bank cost, the total cost of the 842 linear feet of conduit and for the installation cost of seven manholes; this combined amount shall not exceed \$170,000.00. **CUSTOMER** will purchase and supply eight (8) manholes, one of which will become property of the **CITY**; **CUSTOMER** will be reimbursed for cost of one manhole by the **CITY'S** contractor; provided, however, if the contractor fails to pay **CUSTOMER** in a timely manner, the **CITY** shall be liable for the payment thereof.

3. Subject to the provisions in Section 2 of this Agreement, **CUSTOMER** will make payment for their portion of the above-described work based on 10.00% of the entire duct bank costs, 842 linear feet of conduit and the installation cost of the 7 manholes. The **CITY** will invoice **CUSTOMER** after completion of the work as provided in Section 6 below. The current estimate of \$1.1 million for all work described is based on successful bidding of the project by April 1, 2007.

4. CITY expects to begin work on the duct bank on or around June 15, 2007 and estimates completion of the duct bank on or around March 1, 2008. However, CITY may adjust or extend this work schedule as weather conditions require.

5. CUSTOMER will regularly inspect construction/installation of all duct banks, conduits and manholes to insure proper installation; provided, however, that CITY shall be solely responsible for ensuring that the work is performed in compliance with all laws and codes, and performed in an a first class workmanlike manner. CUSTOMER must approve all completed construction before final payment will be made; HOWEVER, CUSTOMER will not unduly or unreasonably withhold such approval and shall base said approval on acceptable standards and practices common to construction.

6. When the duct bank, manhole and conduit construction are complete and have passed CUSTOMER inspection, CITY will submit to CUSTOMER an invoice for the appropriate costs. CUSTOMER will then have 30 days from receipt of the invoice to pay CITY the amount due.

7. At the time of payment, CUSTOMER will be the sole owner and administrator of 11.38% of the previously described 2,661 linear feet of the common duct bank; specifically two (2) 4" conduits, spacers, encasement, and seven manholes in addition to the 842 linear feet of 4" conduit. CUSTOMER will be responsible for any requirements or procedures necessitated by local, state, and federal agencies, and/or Kansas One-Call or its equivalent.

8. CUSTOMER agrees future maintenance and/or repairs may be required to the common duct bank. CUSTOMER will be responsible for the cost and repair of any portion of the 11.38% of the previously described 2,661 linear feet of the common duct bank owned by CUSTOMER, specifically two (2) 4" conduits, spacers, encasement, and seven manholes in addition to the 842 linear feet of 4" conduit. The CITY shall be responsible for its portion of the future maintenance and/or repairs to the common duct bank.


9. CUSTOMER has been provided opportunity to comment and review the general intent and design of the duct bank, manholes, and conduit; CUSTOMER is provided a copy of the design as an attachment to this agreement.

Executed this 22nd day of May, 2007.

City of Wichita, Kansas

Cox Communications Kansas, LLC

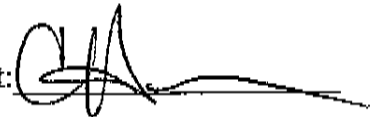
By: _____

By: 

Title: _____

Title: VP of Engineering

Attest: _____

Attest:  _____

APPROVED AS TO FORM:

Gary R. Rebenstorf, City Attorney