

# THE CITY OF AMARILLO, TEXAS

## *INTERDEPARTMENTAL OFFICE COMMUNICATION*

December 23, 2011

TO: Final Distribution

FROM: Planning Department

SUBJECT: L-11-02 License and Hold Harmless to encumber subsurface, surface and air space installation of fiber optic cabling generally located within the Plemons Addition in Section 170, Block 2, AB&M Survey, Potter County, Texas. (Vicinity: SE 7<sup>th</sup> Ave. & Pierce St.)  
APPLICANT: Happy State Bank and Trust Company

The City Manager approved the above-mentioned item on July 25, 2011. The instrument was filed of record in the Official Public Records of Potter County in Volume 4342 Page 649 on August 5, 2011. Please post your records accordingly.



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Kelley Shaw, Planning Director

6/5/11 [Signature]

**LICENSE AND HOLD HARMLESS AGREEMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF POTTER     )

VOL. 4342 PAGE 649  
01200271

This license is made by and between the City of Amarillo, a Texas municipal corporation situated in Potter and Randall Counties, Texas, hereinafter called LICENSOR, and Happy State Bank and Trust Company, (Greg Houlette, Senior Vice President - Operations), hereinafter called LICENSEE, upon the following terms performable in Potter County, Texas:

**W I T N E S S E T H:**

I.

For and in consideration of the covenants herein contained and the full and faithful performance of the same, the LICENSOR hereby grants a license to LICENSEE to construct, maintain and use, certain encumbrances in the public right-of-way as follows:

To encumber subsurface, surface, and air space right-of-way for fiber optic lines within public right-of-way. The encumbrance begins at the NW corner of Lot 1 Block 86 and extending along the north side of said lot to the west right-of-way line of Fillmore Street, and extending six feet into the right-of-way of SE 7<sup>th</sup> Avenue a total length of 140 feet.

Thence Across Fillmore Street at the same alignment a total length of 80 feet.

Thence Across the north side of Block 85 and extending six feet into the right-of-way of SE 7<sup>th</sup> Avenue a total length of 300 feet.

Thence Across Pierce Street at the same alignment a total length of 80 feet.

Thence Across the north side of Lot 10 Block 110 and extending six feet into the right-of-way of SE 7<sup>th</sup> Avenue a total length of 140 feet.

Thence South Across the east side of Lots 10 through 6 Block 110 and extending six feet into the right-of-way of the alley between S. Pierce Street and S. Buchanan Street a total length of 300 feet.

Thence Across SE 8<sup>th</sup> Avenue at the same alignment a total length of 80 feet.

Thence South Across the east side of Lots 10 through 6 Block 109 and extending six feet into the right-of-way of the alley between S. Pierce Street and S. Buchanan Street a total length of 300 feet.

Thence Across SE 9<sup>th</sup> Avenue at the same alignment a total length of 80 feet.

Thence South Across the east side of Lots 10 through 7 and a portion of Lot 6 Block 117 and extending six feet into the right-of-way of the alley between S. Pierce Street and S. Buchanan Street a total length of 275 feet.

Thence in the Alley between S. Pierce Street and S. Buchanan Street 30 feet at bearing S19° 35' 05"E.

Thence in the Alley between S. Pierce Street and S. Buchanan Street and Across SE 10<sup>th</sup> Avenue 95 feet at bearing S0° 40' 29"W to ending point.

Being a total length of 1,900 feet.

Generally located within the Plemons Addition in Section 170, Block 2, AB&M Survey, Potter County, Texas, the fiber optic line exits on the north side of the Happy State Bank Branch at 701 S. Taylor, Amarillo, Texas 79101. The fiber optic line enters the south side of SE 7<sup>th</sup> Avenue at a depth below grade of approximately four feet at 100 feet west of the Fillmore Street right-of-way. Depth is increased to eight feet to cross under existing utilities in S. Fillmore Street and S. Pierce Street. Proposed alignment is three feet north of the south right-of-way for SE 7<sup>th</sup> Avenue to the alley between S. Pierce Street and S. Buchanan Street. The fiber optic line will go overhead at Xcel power pole No. 701 and continue on Xcel poles down the west side of said alley to Xcel power pole No. 6111. The fiber optic line will be routed down this pole into the ground a depth of about four feet and be bored under SE 10<sup>th</sup> Avenue to point of destination at the Happy State Bank branch at 1000 S. Buchanan Street, Amarillo, Texas 79101.

The general locations and details of the above-described encumbrances are shown in detail on the attached Hold Harmless Exhibit prepared by J Shehan Engineering, dated May 31, 2011. This license supercedes any prior agreement or license pertaining to the described location and use.

The required annual fees for this agreement are waived by the City because the location is within the Tax Increment Reinvestment Zone No. 1.

The term of this license shall be for a period of one (1) year from the effective date hereof and shall be automatically extended for successive one year periods provided, however, either party may terminate this Agreement by providing written notice of termination to the other party on or before thirty (30) days prior to the end of any annual term.

II.

This license is granted upon LICENSEE's agreement to strictly comply with the following terms and conditions:

2.1. This license shall not be assigned, sold or in any other manner transferred without the prior written consent of the LICENSOR. Notwithstanding paragraph 2.7 below breach of this condition shall immediately terminate this license and shall require restoration of the premises to the condition which existed prior to the execution of this agreement. Upon failure to restore said property as above stated, LICENSOR may perform such restoration at the expense of the then owner of such property being restored.

2.2. LICENSEE agrees that as between LICENSEE and LICENSOR, LICENSEE shall save LICENSOR harmless from any and all liability for personal injuries, property damage or loss of life or property resulting from, or in any manner connected with, LICENSEE's maintenance and use of the above-described intrusions into the public right-of-way.

2.3. LICENSEE shall give LICENSOR prompt and timely notice of any claim made or suit instituted in connection with LICENSEE's maintenance and use of the above described intrusions which in any way, directly or indirectly, contingently or otherwise, affects or may affect LICENSOR. To the extent that LICENSEE fails to assume the defense of LICENSOR in a timely manner, as required above LICENSOR shall have the right to compromise and defend the same to the extent of its own interests without waiving its right to call upon LICENSEE for defense or indemnity.

2.4. LICENSOR retains the right to require the removal of any or all of the intrusions into the public right-of-way should LICENSOR find after a public hearing dealing with the matter that said intrusions into the public right-of-way unreasonably interfere with the public's use of its right-of-way or in any other way hampers the public's rights.

2.5. LICENSEE hereby agrees to assume all costs for damages and repairs to public utilities, street services or any other public improvement located in or adjacent to the public right-of-way described above, that are caused by said intrusions regardless of the type of damage caused by LICENSEE, its employees, agents, or contractors. LICENSEE further agrees to hold LICENSOR harmless from any costs occasioned by or necessitated by the relocation of LICENSEE's facilities due to entry of the LICENSOR onto the right-of-way for maintenance, replacement or repair of any line or lines, including water and sewer lines, located in the public right-of-way. In this regard, LICENSEE specifically recognizes the

potential hazards of erecting or placing encumbrances and intrusions in the public utility easement.

2.6. Any notice required by this agreement shall be sufficient if served by certified or registered United States mail on City Manager of the City of Amarillo, P.O. Box 1971, Amarillo, Texas, 79105-1971; or upon Happy State Bank and Trust Company, Greg Houlette, Senior Vice President – Operations, 701 S Taylor, Amarillo, TX 79101.

2.7. LICENSEE's failure to perform any of the duties imposed hereby shall constitute a breach of this agreement and shall be a cause for revocation of this license if said breach is not cured within ten (10) days of notice of said breach. In the event of breach, LICENSEE agrees to remove all encumbrances from the right-of-way no later than thirty (30) days from its failure to cure the breach as provided above. In the event legal proceedings are necessary to enforce LICENSOR's rights under this agreement, all costs, including reasonable attorneys' fees, shall be paid by LICENSEE.

EXECUTED by the last of the parties to sign on this 25<sup>th</sup> day of July, 2011.

CITY OF AMARILLO

ATTEST:

Donna DeRight  
Donna DeRight, City Secretary

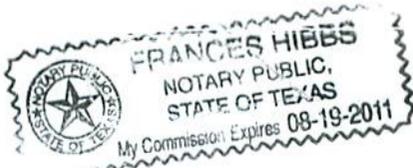
By W. Jarrett Atkinson  
W. Jarrett Atkinson, City Manager

HAPPY STATE BANK AND TRUST COMPANY

By Greg Houlette  
Greg Houlette, Senior Vice President - Operations

THE STATE OF TEXAS )  
COUNTY OF POTTER )

This instrument was acknowledged before me on the 25 day of July, 2011 by W. Jarrett Atkinson, City Manager of the City of Amarillo, a Texas municipal corporation, on behalf of said corporation.



Frances Hibbs  
Notary Public in and for  
The State of Texas

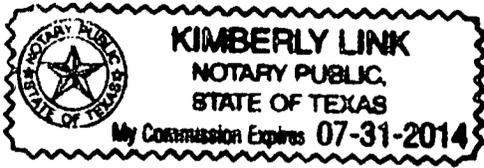
THE STATE OF TEXAS )  
COUNTY OF Randall )

This instrument was acknowledged before me on the 28<sup>th</sup> day of June, 2011 by Greg Houlette, Senior Vice President - Operations, Happy State Bank and Trust, on behalf of said entity.

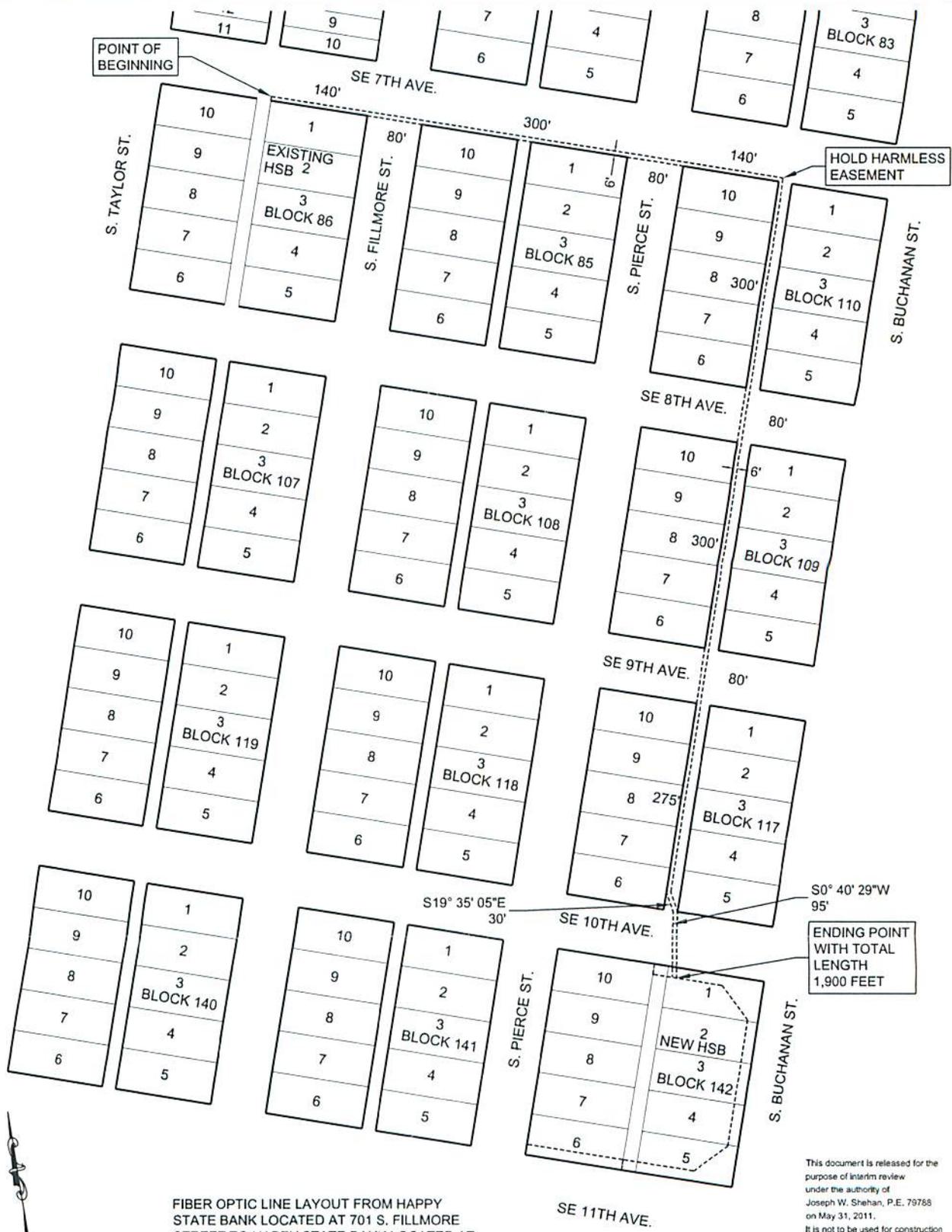
COUNTY CLERK'S MEMO  
Portions of this document not  
legible and/or reproducible when  
received for recording

*Kimberly Link*

Notary Public in and for  
The State of Texas



*Return to:*  
DONNA DeRIGHT  
City Secretary, City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79106-1971



HOLD HARMLESS EASEMENT

ENDING POINT WITH TOTAL LENGTH 1,900 FEET

This document is released for the purpose of interim review under the authority of Joseph W. Shehan, P.E. 79788 on May 31, 2011. It is not to be used for construction and or permit purposes.

SCALE : 1" = 200'

FIBER OPTIC LINE LAYOUT FROM HAPPY STATE BANK LOCATED AT 701 S. FILLMORE STREET TO HAPPY STATE BANK LOCATED AT 1000 S. BUCHANAN STREET.

HOLD HARMLESS EXHIBIT

HAPPY STATE BANK

Downtown Express Bank  
10th & Pierce  
Amarillo, Texas



**J SHEHAN ENGINEERING P.C.**  
Texas Board of Professional Engineers  
Firm Registration # T 001343  
P O Box 150  
Canyon, TX 79015  
jshehan@jse-ce.com  
806-557-4090

Filed AND Recorded  
OFFICIAL PUBLIC RECORDS  
On: Aug 05, 2011 at 08:30A

Receipt# - 160796

Document Number 01200271:

Amount 36.00

Julie Smith  
County Clerk, Potter County

by JSB Deputy

STATE OF TEXAS COUNTY OF POTTER  
I hereby certify that this instrument was  
FILED on this date and at this time stamped  
hereon by me and was duly RECORDED in the  
OFFICIAL PUBLIC RECORDS OF POTTER COUNTY TEXAS,  
in the volume and page as shown.



Julie Smith, County Clerk  
Potter County

By Lydia Smith Deputy

Any provision herein which restricts the sale,  
rental or use of the described real property  
because of color or race is invalid and  
unenforceable under federal law.

**COUNTY CLERK'S MEMO**

Portions of this document may  
not be legible and/or reproducible  
when received for recording.