

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, AUTHORIZING LITIGATION AND AN ENGAGEMENT AGREEMENT WITH EWELL, BROWN, BLANKE & KNIGHT LLP FOR LEGAL SERVICES RELATED TO THE LITIGATION UTILIZING A COMBINATION CONTINGENT FEE AND HOURLY FEE ARRANGEMENT; AND PROVIDING AN EFFECTIVE DATE FOR SUCH OUTSIDE COUNSEL AGREEMENT.

WHEREAS, there is a substantial need for the legal services that are the subject of this resolution; and

WHEREAS, the legal services cannot be adequately performed by the attorneys and supporting personnel of the City of Bryan or Bryan Texas Utilities; and

WHEREAS, the contemplated legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained and because the City of Bryan does not have appropriated or other budgeted funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

1.

The City Council hereby finds and determines that the foregoing recitals are true and correct.

2.

The City Council further finds and determines that:

- (1) Legal services are exempt from competitive bidding requirements, *see* TEX. LOC. GOV'T CODE § 252.022(a)(3);
- (2) The selection of Ewell, Brown, Blanke & Knight LLP as outside counsel to assert the claims summarized below (hereafter, ***Outside Counsel***) is approved, as are the terms and conditions of the employment of such Outside Counsel, as set forth in the proposed agreement with Outside Counsel, attached as **Exhibit A**;
- (3) The City Attorney and Outside Counsel are authorized to assert such claims and file such litigation as the City Attorney deems necessary against Frontier Southwest Incorporated, its corporate predecessors, affiliates, parents, and subsidiaries, and such other defendants as may be added to the litigation to enforce the terms of the Joint Use Contract (Flat Rental Per Pole) between the City of Bryan and The Southwestern States Telephone Company, dated October 20, 1949 (as amended);
- (4) The Mayor is authorized to execute an agreement with Outside Counsel on behalf of the City of Bryan substantially similar to the agreement attached hereto as **Exhibit A**; and

- (5) Each City of Bryan and Bryan Texas Utilities official and employee is authorized to do whatever is necessary or convenient to accomplish the purposes of this resolution.

APPROVED AND ADOPTED at a regular meeting on this 5th day of March, 2019.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Andrew Nelson, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney