

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jan 22, 2015

Action Requested By: Engineering

Agenda Type: Resolution

Subject Matter:

Utility Relocation/Reimbursement Agreement with AT&T Corp.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Utility Relocation/Reimbursement Agreement with AT&T Corp. for Relocation of Utility Facilities for Greenbrier Parkway, Phase III, Project No. 65-13-RD02

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Agreement between City and AT&T for the relocation of existing AT&T fiber optic facilities for the proposed new Greenbrier Parkway. Reimbursable agreement in the amount of \$133,006.00. Account No. 23-6500-0813-8152.

Associated Cost: \$133,006.00

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: Nathaniel Hunt

Date: 1-17-15

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Engineering

Council Meeting Date: 1/22/2015

Department Contact: Lynn Majors

Phone # 256-427-5201

Contract or Agreement: Utility Relocation/Reimbursement Agreement

Document Name: Greenbrier Parkway Phase III, Project No. 65-13-RD02

City Obligation Amount: \$133,006.00

Total Project Budget: \$133,006.00

Uncommitted Account Balance: 0

Account Number: 23-6500-0813-8152

Procurement Agreements

Not Applicable

Not Applicable

Grant-Funded Agreements

Not Applicable

Grant Name:

Department	Signature	Date
1) Originating	<i>Kathleen</i>	1-12-15
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a Utility Relocation/Reimbursement Agreement with AT&T Corp. for Relocation of Utility Facilities for Greenbrier Parkway, Phase III, Project No. 65-13-RD02, in the County of Madison, Huntsville, AL, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Utility Relocation/Reimbursement Agreement with AT&T Corp. for Relocation of Utility Facilities for Greenbrier Parkway, Phase III, Project No. 65-13-RD02 consisting of a total of eight (8) pages including Exhibit "A" and Exhibit "B", and the date of January 22, 2015, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 22nd day of January, 2015.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 22nd day of January, 2015.

Mayor of the City of Huntsville,
Alabama

REIMBURSEMENT AGREEMENT

This AGREEMENT made this 14th day of January, 2015, by and between AT&T Corp., on behalf of itself and its affiliated companies, which has a place of business at 3450 Riverwood Parkway, Atlanta, GA 30339 ("AT&T") and The City of Huntsville, which has a place of business at PO Box 308, Huntsville, AL 35804 "The City").

WITNESSETH:

WHEREAS, AT&T is a grantee of a 20' wide easement recorded on **January 5, 1987** in Deed Book **768**, Page **69**, and, County of: Limestone, State of Alabama (the "Easement"); and

WHEREAS, the Easement and any AT&T buried cable and associated facilities that have been placed within the Easement will be adversely impacted by The City's proposed construction within the Easement strip; and

WHEREAS, The City will reimburse AT&T for AT&T's cost of protecting, replacing, relocating and/or lowering a section of the AT&T Decatur to Huntsville , AL Fiber Cable between Marker 27 and Marker 31 (the "Cable");

NOW THEREFORE, the parties agree as follows:

1. AT&T will provide engineering, plant protection, labor, materials, and supervision necessary to protect, and replace the Cable, as deemed necessary in AT&T's sole judgment (the "Work"). The Work is more particularly described in attached Exhibit A. The starting date will be set by the parties so that the Work can be completed as expeditiously as practicable.

The City shall pay AT&T the actual cost of the Work, which is estimated to be: \$133,006.00 as shown on attached Exhibit B. The estimated cost shall be paid by The City upon completion of the project. The City acknowledges that the estimated cost does not include rock removal or rock bore costs if rock removal is required, the actual cost may greatly exceed the estimated cost... Upon completion of the Work, AT&T will send a final invoice to The City for the actual cost of the Work. The City will pay to AT&T the total cost of the project within thirty (30) days from the invoice date. The City further acknowledges that its proposed construction will require AT&T to replace the Cable facility beyond the limits of the City's construction; this project will not require any change to the location of the Easement.

3. The City agrees to exercise all due caution while working near the Cable, in order to prevent damage to the Cable. The City agrees:

(a) to notify AT&T by telephone at 1-800 252-1133 at least forty-eight (48) hours prior to performing any construction, demolition or repairs at the Cable location;

(b) not to use at the Cable location any tool, equipment, or the machinery capable of being operated within ten (10) feet of the Cable;

(c) to perform construction, demolition, repair, modifications, additions and any other activities in compliance with all applicable laws and regulations and in a manner that does not interfere with the operations of AT&T; and

(d) not to work at the Cable location without AT&T's prior authorization and AT&T's On-Site Work Force personnel being present during the work.

4. To the extent limited by Alabama law, the City (the "Indemnifying Party") shall indemnify, defend and hold harmless AT&T (the "Indemnified Party") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses that may from time to time be asserted by third parties against the Indemnified Party because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this Agreement. For purposes of indemnifications set forth in this Agreement, "Indemnified Party" means AT&T, its affiliates, subsidiaries, parent, successors and assigns and its and their employees, directors, officers, agents, contractors and subcontractors.

4.1 shall notify the Indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby;

4.2 shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and

4.3 shall reasonably cooperate with the defense.

5. AT&T makes no warranties, express or implied, including any implied warranties as to merchantability or fitness for a particular purpose.

6. Notwithstanding any provision of this agreement to the contrary, except as provided in Section 4, in no event shall either party be liable to the other party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, including, but not limited to, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers or of other third parties, occasioned by any cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence or strict liability.

7. The City shall keep the Cable and other property of AT&T free from all mechanic's, artisan's, materialman's, architect's, or similar services' liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.

8. Except for payment of the cost of the Work, neither party shall have any liability for its delays or its failure in performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the Elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

9. A party shall be in default if it fails to perform or observe any material term or condition of this Agreement and the failure continues unremedied for thirty (30) days after receipt of written notice (fourteen (14) days in the case of The City's failure to pay AT&T the estimated and/or actual cost of the Work); provided, however, that when such default (excluding The City's non-payment) cannot reasonably be cured within such thirty (30) day period, this period will be extended if that party promptly commences to cure the same and prosecutes such curing with due diligence. Upon the default by a party, the other party may terminate this Agreement and pursue any legal remedies it may have under applicable law or principles of equity.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. The City shall not assign, transfer, or dispose of this Agreement or any of its rights or obligations hereunder without prior written consent of AT&T; provided, however, that The City may assign or transfer this Agreement to a controlling or controlled affiliate or to a successor in the event of reorganization, including a merger or sale of substantially all of its assets, without the consent of AT&T. An assignment, transfer or disposition of this Agreement by The City shall not relieve The City of any of its obligations under this Agreement. AT&T shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part, to any party. An assignment, transfer or disposition of this Agreement by AT&T shall not relieve AT&T of any of its obligations under this Agreement. Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

11. Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, or by commercial overnight delivery service addressed to the recipient as set forth below or to such other address or individual, as may be designated by notice given by the party to the other:

AT&T:

AT&T Corp.
3450 Riverwood Parkway
Atlanta, GA 30339
Room 162
Attention: Right of Way Dept.

With a copy to:

AT&T Corp.
One AT&T Way
Room 3A118A
Bedminster, NJ 07921
Attention: Legal Department - Network Services

City of Huntsville
Attn: Kathy Martin
PO BOX 308
Huntsville, AL 35804

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and if given by registered or certified mail, return receipt requested or by commercial overnight delivery service on the date of receipt thereof.

12. The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

13. This Agreement shall be governed by and construed in accordance with the domestic laws of the **State of Alabama** without reference to its choice of law principles.

14. Each party represents and warrants that:

- (a) It has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to

bankruptcy, insolvency, creditors' rights and general equitable principles;
and

- (d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court or body.

15. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral and written communications, understandings and agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are an integral part hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

16. Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporate, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 17 and shall be entitled to enforce the obligations of this Section 17.

17. The relationship between the parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18. This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to benefit of the parties and each of their respective permitted successors and assigns.

19. No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

20. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives as of the date first above set forth.

City of Huntsville AL

By: _____

Name: _____

Title: _____

Tax ID: _____

AT&T CORP.

By: Alvin S. Richardson

Name: Alvin S. Richardson

Title: Sr. Technical Project Manager

EXHIBIT A

THE WORK

The project construction will consist of the following

- A.** Expose hand hole at the splice location to insure enough slack cable is in place to do the splice.
- B.** Remove the splice HH and replace with a splice 4x4x4 split MH at marker 31 of the relocation project. Place a splice 4x4x4 split MH over existing fiber cable at Marker 27, This placement will be in conjunction with a splice pit to obtain slack cable for the splice. Place 1 each HH at the east side of the proposed Parkway crossing outside of the ROW limits of the Parkway.
- C.** Excavate or directional bore and place 3400 feet of 3 each 1.5" ID SDR-11 HDPE duct between the splice points at Marker 31 to Marker 27. Duct to be placed at a depth of 48" below The City's finished grade. In the immediate area of the proposed Parkway crossing approximately 500' of 6" SDR-11 HDPE with 3 each 1.5" ID SDR-11 HDPE Ducts. 6" duct will be placed by directional bore at minimum 10' below proposed final grade.
- D.** Place fiber cable and slack in the conduit system at all HH's and MH's.
- E.** Support AT&T construction during the fiber cut over process, .
- F.** Restore the construction area and remove contractor placed BMP's .
- G. Engineering:** Project Management, detailed engineering, coordination with all parties, construction management, bid development, plant protection, inspection and all cable record update.
- H.** Order and handle replacement fiber cable.
- I.** AT&T direct service cut over.

EXHIBIT B

ESTIMATED COST :

Construction & Materials	\$ 99,500.00
Management, detail Eng (Consultant)	\$ 9,006.00
AT&T Cut over Labor / Materials	\$ 15,000.00
AT&T Administration	\$ 5,000.00
Replacement Fiber cable	\$ 4,500.00
Sub Total Project Estimated Cost	\$ 133,006.00
ESTIMATE TOTAL (as shown on page 1)	\$ 133,006.00