RESOLUTION NO. 2016-01-08

STATE OF GEORGIA
COUNTY FULTON

A RESOLUTION TO APPROVE AN AGREEMENT WITH AT&T IN CONNECTION WITH ADJUSTMENTS TO FACILITIES WITHIN THE SCOPE OF THE CC-10 PROJECT

WHEREAS, the City of Sandy Springs ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia and is charged with providing public services to its residents; and

WHEREAS, the City has determined it is necessary to construct certain improvements to the intersection of Sandy Springs Circle at Mt. Vernon Highway/Johnson Ferry Road, Project Number CC-10 (the "Project"); and

WHEREAS, the Project included developing a plan to relocate overhead distribution utility lines around the Project site; and

WHEREAS, City Staff and consultants have engaged in discussions with utility providers, resulting in a determination of the work and costs to be borne by all appropriate parties; and

WHEREAS, Bellsouth Communications, LLC d/b/a AT&T Southeast ("AT&T") is the owner of aerial facilities in and around the Project site and the City, along with its consultants, have had ongoing negotiations with AT&T as to the terms and conditions for the removal and relocation of its facilities; and

WHEREAS, AT&T and the City have been negotiating the attached Agreement containing the terms and conditions for the work to be done at the negotiated cost of $85,784.11; and

WHEREAS, in order to meet the CC-10 project schedule for development and completion, AT&T must begin the work covered by the Agreement as soon as possible; and

WHEREAS, City Council has considered the attached Agreement and have determined that it is in the city's best interest to authorize the City Manager and City Attorney to finalize the Agreement for the Mayor's execution.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA, THAT:

The Mayor and City Manager in consultation with the City Attorney are hereby authorized to negotiate and execute all documents necessary, including but not limited to, the execution of an Agreement to be negotiated between AT&T and the City of Sandy Springs substantially similar to the Agreement attached hereto as Exhibit "A".

RESOLVED this the 5th day of January, 2016.

Approved:

Russell K. Paul, Mayor

Attest:

Michael D. Casey, City Clerk

(Seal)

EXHIBIT "A"

SPECIAL CONSTRUCTION AGREEMENT

Project #: A009PZR

Authority: 6FE11270A
AT&T Contact: Arlene Jackson

Telephone #: 404-532-7570

Customer Name: City of Sandy Springs C/O John McDonough City Manager
Customer Number: 770-730-5600
Work Site Address: 7840 Roswell Rd, Sandy Springs, GA 30350

This Special Construction Agreement ("Agreement") is entered into by and between BellSouth Telecommunications, LLC. d/b/a AT&T Southeast ("AT&T") and City Sandy Springs ("Customer"). AT&T and Customer hereby agree to the following terms and conditions:

1. **Special Construction.** This Agreement is for the special construction as further described on Exhibit 1, attached hereto and incorporated herein by this reference ("Special Construction"). **Payment in full is required within thirty days after AT&T issues an invoice to the Customer for the Special Construction Charges.**

2. **Early Termination.** Should Customer terminate or cancel this Agreement prior to the completion of construction, Customer shall remain liable for all reasonable and necessary Special Construction Charges.

3. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

4. **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

5. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

6. **Effect of Waiver.** No consent or waiver, express or implied shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

7. **Headings.** The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

8. **Modification.** This Agreement constitutes the entire agreement between the parties and can only be changed in a writing or writings executed by both of the parties. Each of the parties forever waives all right to assert that this Agreement was the result of a mistake in law or fact.

9. **Interpretation.** The parties agree that this Agreement shall not be interpreted in favor or against either any party. The parties further agree that they entered into this Agreement after conferring with legal counsel, or after having a reasonable opportunity to confer with legal counsel.

10. **Applicable Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Georgia, without regard to Georgia's conflict of law principles.

11. **Attorneys' fees.** If either party materially breaches this Agreement and should the non-breaching party seek to enforce it rights through legal action, the prevailing party shall recover from the other party all costs and expenses incurred, including, but not limited to, reasonable attorneys' fees.

12. **Authority.** The signatories to this Agreement represent and warrant that they are duly authorized to execute this Agreement.

13. **No Precedent.** Except for the matters resolved and released herein, this Agreement is of no value and shall not be considered precedent for resolving any dispute that may arise in the future. The parties acknowledge that there is a disagreement concerning the rights of each party and the requirement of payment, and those payments agreed to hereunder are a settlement and accord of any disagreements relating to the construction contemplated by this Agreement.

14. **Changes in Scope of Work.** The parties recognize that this is an 'Actual Cost' contract. A preliminary cost estimate has been provided. If the Customer initiates changes in the scope of the work after AT&T has provided this cost estimate or after executing this contract, the above cost estimate and this contract are null and void. A new cost estimate must be provided based on the new scope of work and a new contract entered. Additionally, in the event there exists a condition in the field that is different from the field conditions that existed at the time AT&T provided the quote or from the time the Customer executes the contract, AT&T shall bill and Customer shall pay any reasonable and necessary costs, provided that AT&T shall provide a proposal of revised estimated costs to the Customer before commencing new scope of work, and Customer shall have the right to reject such costs. Field conditions that may alter the cost associated with this work include, but are not limited to, conditions that exist below the surface of the ground and could not have been anticipated at the time of the price quote, above ground barriers, Acts of God affecting the progress or sequencing of the work, labor disputes and other conditions or circumstances that AT&T could not have reasonably anticipated at the time the cost estimate was provided.

15. **Final Agreement.** THIS AGREEMENT REPRESENTS THE ENTIRE AND FINAL EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES; THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AGREEMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative on the dates set forth below.

CUSTOMER	**AT&T Southeast**
By _____	By _____
Printed Name	*Printed Name*
By _____	By _____
Authorized Signature	*Authorized Signature*
Title _____	Title _____
Date _____	Date _____

EXHIBIT 1
DESCRIPTION OF SPECIAL CONSTRUCTION

Project: City of Sandy Springs-SANDY SPRINGS CIRCLE AT MT. VERNON HWY/JOHNSON FERRY RD. INTERSECTION IMPROVEMENTS

This agreement and cost estimate is for the following: Construction of a new manhole and conduit system for the future relocation of existing AT&T aerial facilities that are in conflict with the above-referenced project. The location of this work is along 1) Hilderbrand Rd from Sandy Springs Cir to 175 Hilderbrand Rd. Estimated cost of this work is for conduit and manholes work only. Estimate is $85,784.11.