

STATE OF GEORGIA  
COUNTY FULTON

A RESOLUTION TO APPROVE AN AGREEMENT WITH COMCAST IN CONNECTION WITH ADJUSTMENTS TO FACILITIES WITHIN THE SCOPE OF THE CITY CENTER 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 develop a City center and infrastructure project (“City Center”); and

**WHEREAS**, following a year-long process which included multiple public open forum and stakeholder meetings inviting input, the Sandy Springs Mayor and City Council (“City Council”) adopted its master plan for City Center (“Master Plan”) on December 18, 2012; and

**WHEREAS**, on January 30, 2013, a proposed Phase I Implementation Plan (“Phase I Implementation”) for City Center, providing a strategy and roadmap to steer redevelopment in the City and accomplish the goals set forth in the adopted City Center Master Plan, was presented to City Council at its open meeting retreat; and

**WHEREAS**, on February 5, 2013, City Council, by resolution in regular session, approved the Phase I Implementation as presented at the City Council retreat in January 2013, and authorized the City Manager and staff to proceed with the necessary steps to implement the Master Plan; and

**WHEREAS**, the Phase I Implementation contemplated developing a plan to relocate overhead distribution utility lines around the City Center site to below ground; and

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

**WHEREAS**, Comcast Corporation (“Comcast”) is the owner of aerial facilities in and around the City Center site and the City, along with its consultants, have had ongoing negotiations with Comcast as to the terms and conditions for the removal and relocation of its facilities; and

**WHEREAS**, Comcast 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 \$128,758.00; and

**WHEREAS**, in order to meet the City Center project schedule for development and completion, Comcast must begin the work covered by the Agreement as soon as possible; and

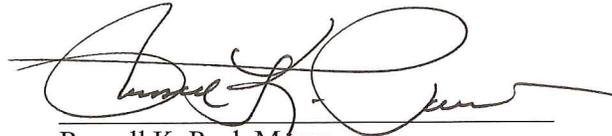
**WHEREAS**, City Council has considered the attached draft Agreement and have determined that it is in the city’s best interest to authorize the City Manager and City Attorney to finalize the Agreement for the Mayor’s execution.

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

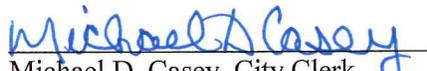
The Mayor and City Manager in consultation with the City Attorney are hereby authorized to negotiate and execute all documents necessary, including but not limited to, the execution of an Agreement to be negotiated between Comcast and the City of Sandy Springs substantially similar to the Agreement attached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

**RESOLVED** this the 5<sup>th</sup> day of January, 2016.

Approved:

  
Russell K. Paul, Mayor

Attest:

  
Michael D. Casey, City Clerk

(Seal)



**EXHIBIT "A"**

UTILITY RELOCATION AGREEMENT

This **UTILITY RELOCATION AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Comcast Corporation ("Comcast") and City Sandy Springs, Georgia ("City"). (Comcast and City are each a "Party", and collectively the "Parties"). The Parties hereby agree as follows:

1. **Utility Adjustment.** This Agreement is for the construction as further described on Exhibit 1, attached hereto and incorporated herein by this reference ("Construction").
2. **Early Termination.** Should City terminate or cancel this Agreement prior to the completion of construction, City shall remain liable for all reasonable and necessary 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 City initiates changes in the scope of the work after Comcast 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 Comcast provided the quote or from the time the City executes the contract, Comcast shall bill and City shall pay any reasonable and necessary costs, provided that Comcast shall provide a proposal of revised estimated costs to the City before commencing new scope of work, and City 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 Comcast 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.

CITY	COMCAST
By _____	By _____
<i>Printed Name</i>	<i>Printed Name</i>
By _____	By _____
<i>Authorized Signature</i>	<i>Authorized Signature</i>
Title _____	Title _____
Date _____	Date _____

**EXHIBIT 1**  
**DESCRIPTION OF CONSTRUCTION**

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Project: City of Sandy Springs City Center

This agreement and cost estimate is for the following: Construction of a new manhole and conduit system for the future relocation of existing Comcast aerial facilities in conflict with above referenced project; Construction of placing & splicing new copper cable and fiber into new manhole & conduit system, and removal of existing aerial copper cable and fiber from the Comcast aerial facilities that are in conflict with the above referenced project.

The location of this work is along 1) Along Sandy Springs Circle from Johnson Ferry Rd to Mt. Vernon Highway and 2) Along Mt Vernon Highway from Sandy Springs Circle to Roswell Rd. 3) Along Johnson Ferry Rd from Sandy Springs Circle to Roswell Rd.

Estimated cost of this work is \$128,758.00.