



**Professional Services Agreement
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 8
AGENDA DATE: Thu 02/09/2006
PAGE: 1 of 1**

SUBJECT: Authorize negotiation and execution of the Group 12 Street Reconstruction Utility Adjustment Agreement, Little Hill Circle Utility Adjustment Agreement and Monroe Street Utility Adjustment Agreement with Southwestern Bell Telephone, L.P. d/b/a AT&T Texas ("AT&T Texas"), to allow the City to secure funds from AT&T Texas in the amount of \$154,192.50, including a construction contingency amount of \$7,432, to incorporate the construction of AT&T Texas infrastructure adjustments into the City's construction contract for the Group 12 Street Reconstruction and Utility adjustment Project.

AMOUNT & SOURCE OF FUNDING: Funding in the amount of \$154,192.50, including a construction contingency amount of \$7,342, will be secured from AT&T to amend the Public Works Department Fiscal Year 2005-2006 Capital Budget.

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Public Works
DEPARTMENT:

DIRECTOR'S
AUTHORIZATION: Sondra Creighton

FOR MORE INFORMATION CONTACT: Rick Colbrunn, 974-7089; Laura Bohl, 974-7064

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

During the design phase of the Group 12 Street Reconstruction Project conflicts were identified between the existing AT&T Texas infrastructure and the proposed street reconstruction on Little Hill Circle and Monroe Avenue. It was determined that the AT&T Texas infrastructure would require adjustment and protection to avoid damaging the infrastructure during street reconstruction. The City and AT&T Texas agreed that to better coordinate and facilitate the AT&T Texas adjustments the City would include the adjustments within the bid documents for the Group 12 Street Reconstruction and AT&T Texas would provide funding for the entire construction cost related to their adjustments.

While AT&T Texas has presently agreed to fund the utility adjustment work, it is also reserving the right to file suit to determine whether it is required by state law or city ordinance to fund the adjustment.

LITTLE HILL CIRCLE UTILITY ADJUSTMENT AGREEMENT

This Reservation of Rights Agreement is entered into by and between Southwestern Bell Telephone, L.P. d/b/a AT&T Texas ("AT&T Texas") and the City of Austin, Texas (the "City").

WHEREAS, the City is undertaking a public improvement project known internally as the "Group 12 BGA Street Reconstruction and Utility Adjustment Project" ("the Project"). The Project will involve the reconstruction of Monroe Street between South Congress and East Side Drive, Little Hill Circle off of Craigwood Drive, 31st Street between Speedway and Walling, Linnet between Westgate and Longview and Granger between Bucks Run and Blue Meadow, all of which is inside the corporate limits of the City of Austin; and

WHEREAS, one segment of the project requires a full depth street reconstruction of Little Hill Circle (the "Little Hill Project"); and

WHEREAS, AT&T Texas has facilities within the public right-of-way of Little Hill Circle consisting of a 200-pair cable that tapers down to a 25-pair cable approximately 10 to 15 inches beneath the street grade; and

WHEREAS, when the AT&T Texas facilities were first installed, concrete caps were placed directly above the facilities; and

WHEREAS, the City has determined that the removal, relocation, or adjustment of the AT&T Texas facilities (the "Adjustment") is reasonably necessary to the construction, operation, repair, maintenance, and installation of the Little Hill Project; and

WHEREAS, the City believes that, under Chapter 14-11 of the City of Austin Municipal Code, AT&T Texas must remove, relocate, or adjust its facilities when it is reasonably necessary to the construction, operation, repair, maintenance or installation of City facilities in, on or under Little Hill Circle at AT&T Texas' own expense, and not later than the 121st day after the date notice was given to AT&T Texas; and

WHEREAS, AT&T Texas is willing to participate with the City to incorporate this Adjustment within the City's construction contract, but believes that the City should bear the cost of the Adjustment; and

WHEREAS, AT&T Texas will be forced to adjust and otherwise protect its facilities because the City intends to continue with the Little Hill Circle Project,

despite the conflict with AT&T Texas' facilities; and

WHEREAS, AT&T Texas does not wish to waive any claim it might have for the costs of performing the Adjustment or other compensation to which it may be entitled.

NOW, THEREFORE, AT&T Texas and the City hereby agree as follows:

1. AT&T Texas will agree to review the Special Specification which will incorporate the Adjustment within the City's construction contract for the timely completion of the Little Hill Project. The City understands and agrees that it will not pursue the Little Hill Project; to the extent damage could be caused to AT&T Texas' facilities, until the AT&T Texas facilities have been adjusted.
2. AT&T Texas shall provide contact information for an AT&T Texas representative and shall inspect the work in progress.
3. The City shall hire the appropriate subcontractor from a list approved by AT&T Texas, complete the Adjustment to accommodate the Little Hill Project, allow and facilitate inspections by AT&T Texas, and provide AT&T Texas with the ability to audit the Adjustment upon completion.
4. The City and AT&T Texas acknowledge that, upon completion of the Adjustment, AT&T Texas shall continue to own the facilities.
5. The cost of the Adjustment is currently estimated at \$21,262.50, including a construction contingency amount of \$1,012.50. The City shall obtain the written approval of AT&T Texas for all change order requests for the Adjustment prior to the City issuing the approved change order to the contractor.
6. Within 30 days of the execution of this Agreement, AT&T Texas will pay the City the estimated costs of the Adjustment with the contingency amount. AT&T Texas will pay the City the estimated costs of a change order affecting the Adjustment within 30 days of approval of the change order by AT&T Texas.
7. The City shall place the AT&T Texas funds in a construction escrow account for the Adjustment, as described below. The unused portion of the funds provided by AT&T Texas under this Agreement shall be returned to AT&T Texas within 30 calendar days after the completion of the Adjustment. The City will provide AT&T Texas with an accounting of the Adjustment disbursements from the escrow account expenses within

30 days of Adjustment completion.

8. The City and AT&T Texas acknowledge that this Agreement and the actions taken pursuant to this Agreement shall not in any way compromise the claim of the City that AT&T Texas is responsible under Chapter 14-11 of the City of Austin Municipal Code for the costs associated with the Adjustment, or the claim of AT&T Texas that it is not obligated to bear the expense of the Adjustment.
9. The City acknowledges that by entering into this Agreement, AT&T Texas is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of Chapter 14-11 of the City of Austin Municipal Code or to assert any other claim it may possess, at law or in equity, before any tribunal of competent jurisdiction, including without limitation a state or federal court.
10. The City agrees that this Agreement shall constitute a response to the City's 120-day relocation letter regarding the Little Hill Project.

Executed effective as of the day of , 2006.

**SOUTHWESTERN BELL
TELEPHONE, L.P. d/b/a AT&T TEXAS**

By: _____
Name: _____
Title: _____

THE CITY OF AUSTIN, TEXAS

By: _____
Name: _____
Title: _____

**GROUP 12 STREET RECONSTRUCTION
UTILITY ADJUSTMENT AGREEMENT
CITY OF AUSTIN AND AT&T TEXAS**

STATE OF TEXAS

COUNTY OF TRAVIS

This Agreement is made and entered into by and between the City of Austin, Texas (the "City") and Southwestern Bell Telephone, L.P. d/b/a/ AT&T Texas ("AT&T Texas"), hereinafter collectively referred to as the "Parties", upon the premises and for the consideration stated herein.

WHEREAS, the City has instructed AT&T Texas to relocate, protect and otherwise adjust its facilities located in certain dedicated public right-of-way in connection with the City's Group 12 Reconstruction Project (the "Project"); and

WHEREAS, the City desires to provide the necessary design, surveying, project management, permitting, utility adjustments, construction, traffic control, inspection, and contract administration for the relocation, protection, and adjustment of the AT&T Texas facilities (the "Adjustment"); and

NOW, THEREFORE, the Parties agree as follows:

1. The Adjustment. The location and scope of the Adjustment is described in attached Exhibit "A".
2. Utility Adjustment Agreements. This Agreement is subject to the Utility Adjustment Agreements between the Parties, copies of which are attached as Exhibits "B" and "C".
3. Project Development.
 - (a) The City will be responsible for the development of the engineering design, plans and specifications, the construction inspection, and the testing for the Project and the Adjustment. The plans and specifications for the Adjustment shall be in accordance with the design and construction standards of the City and AT&T Texas. The City will be responsible for any required modifications to the engineering design, plans, and specifications for the Adjustment during the development and construction of the Adjustment. The City will ensure that its design engineer and contractor provide professional liability insurance in accordance with the standard requirements of the City for such Adjustment, during the term of the design and construction of the Adjustment.

- (b) The City has solicited bids for the construction of the Adjustment based on the plans and specifications and in accordance with applicable state and local bidding laws, practices, and procedures. The City has notified AT&T Texas of the lowest responsible bid for the Project and, upon written agreement of AT&T Texas, the City will enter into a firm unit-price contract for the Adjustment with the successful bidder.

4. Management by the Parties.

- (a) The AT&T Texas project manager (the "AT&T Texas Manager") will act on behalf of AT&T Texas with respect to the Adjustment, coordinate with the City, receive and transmit information and instructions, and will have complete authority to interpret and define the AT&T Texas policies and decisions with respect to the Adjustment.
- (b) The City will manage the development and construction of the Project and the Adjustment. The Director of the City's Public Works Department (the "Director") will act on behalf of the City with respect to the Adjustment, coordinate with AT&T Texas, receive and transmit information and instructions, and will have complete authority to interpret and define the City's policies and decisions with respect to the Adjustment. The Director will designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the Adjustment.

5. Management Duties.

- (a) The City hereby covenants and agrees to provide to AT&T Texas:
 - (i) written copies of all contracts affecting the Adjustment;
 - (ii) a statement of all disbursements made and debts incurred relating to the Adjustment; and
 - (iii) executed change orders, jointly approved by the City and AT&T Texas, related to the Adjustment.
- (b) AT&T Texas hereby covenants and agrees to:
 - (i) review and approve the plans and specifications for the Adjustment;
 - (ii) review any change order proposal or request for information for the Adjustment and return the change order request to the City within three (3) working days of its receipt by the AT&T Manager with a written recommendation for its disposition;

(iii) inform the City's Project Manager immediately of any problems observed during the construction of the Adjustment;

(iv) inspect the Adjustments at appropriate intervals and accept the completed, approved construction;

(v) attend meetings at the reasonable request of the City's Project Manager.

6. Liability. To the extent allowed by Texas law, AT&T Texas and the City agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. AT&T Texas agrees to and shall indemnify and hold the City harmless from any and all claims and causes of action arising out of or connected in any way to its activities undertaken by AT&T Texas in connection with this Agreement. The City is a self-insured public entity and will require its contractors and consultants to provide general liability, automobile, and workers compensation insurance in accordance with standard City of Austin contractual requirements.

7. Financial Obligations.

- (a) The cost of the Adjustment is currently estimated at \$154,192.50, including a construction contingency amount of \$7,342.00. The City shall obtain the written approval of AT&T Texas for all change order requests for the Adjustment prior to the City issuing the approved change order to the contractor.
- (b) Within 30 days of the execution of this Agreement, AT&T Texas will pay the City the estimated costs of the Adjustment with the contingency amount. AT&T Texas will pay the City the estimated costs of a change order affecting the Adjustment within 30 days of approval of the change order by AT&T Texas.
- (c) The City shall place the AT&T Texas funds in a construction escrow account for the Adjustment, as described below. The unused portion of the funds provided by AT&T Texas under this Agreement shall be returned to AT&T Texas within 30 calendar days after the completion of the Adjustment. The City will provide AT&T Texas with an accounting of the Adjustment disbursements from the escrow account expenses within 30 days of Adjustment completion.

8. City Inspection and Testing.

The City shall be responsible for the initial inspection of the Adjustment and in coordination with AT&T Texas testing of the construction of the Adjustment. AT&T Texas shall designate inspectors to make the final inspection of the

completed Adjustment. Any deficiencies in the construction of the utility Adjustment identified by the City or AT&T Texas shall be immediately reported in writing to the other party and the City will notify the contractor. The Director will require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City and AT&T Texas.

9. Miscellaneous.

- (a) Force Majeure. In the event that the performance by AT&T Texas or the City of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.
- (b) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: City of Austin
Public Works Department
505 Barton Springs Road
Austin, Texas 78704
Attn: _____

AT&T TEXAS: AT&T Texas
Area Manager-South Austin Engineering
1616 Guadalupe St., Room 417
Austin, Texas 78701
Attn: _____

- (c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- (d) Entire Agreement. This Agreement along with the attached Little Hill Circle Utility Adjustment Agreement and the Monroe Street Utility Adjustment Agreement, contain the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the parties respecting the joint construction of the Adjustments. This Agreement, the Little Hill Circle Utility Adjustment Agreement, and the Monroe Street Utility Adjustment

Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the parties hereto.

- (e) Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by AT&T Texas and the City.
- (f) Other Instruments. The parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____
Authorized Representative

Date: _____

Approved as to Form:

Assistant City Attorney

SOUTHWESTERN BELL TELEPHONE, L.P.
d/b/a AT&T TEXAS

By: _____

Name: _____

Title: _____

Date: _____

Exhibit “A” The “Adjustment”
Exhibit “B” Little Hill Circle Utility Adjustment Agreement
Exhibit “C” Monroe Street Utility Adjustment Agreement

MONROE STREET UTILITY ADJUSTMENT AGREEMENT

This Reservation of Rights Agreement is entered into by and between Southwestern Bell Telephone, L.P. d/b/a AT&T Texas ("AT&T Texas") and the City of Austin, Texas (the "City").

WHEREAS, the City is undertaking a public improvement project known internally as the "Group 12 BGA Street Reconstruction and Utility Adjustment Project" (the "Project"). The Project will involve the reconstruction of Monroe Street between South Congress and East Side Drive, Little Hill Circle off of Craigwood Drive, 31st Street between Speedway and Walling, Linnet between Westgate and Longview and Granger between Bucks Run and Blue Meadow, all of which is inside the corporate limits of the City of Austin; and

WHEREAS, one segment of this project requires a full depth street reconstruction of Monroe Street (the "Monroe Project"); and

WHEREAS, AT&T Texas has facilities within the public right-of-way of Monroe Street consisting of three buried cables and two four inch PVC pipes approximately 17 inches beneath the street grade within approximately six feet from the existing curb; and

WHEREAS, when the AT&T Texas facilities were first installed, concrete caps were placed directly above the facilities; and

WHEREAS, the City represents that a 300 foot portion of the Monroe Project is a road straightening project, as the resulting new curb will be installed directly over existing AT&T Texas facilities unless they are relocated; and

WHEREAS, the City has determined that the removal, relocation, or adjustment of these AT&T Texas facilities (the "Adjustment") is reasonably necessary to the construction, operation, repair, maintenance, and installation of the Monroe Project; and

WHEREAS, the City believes that, under Chapter 14-11 of the City of Austin Municipal Code, AT&T Texas must remove, relocate, or adjust its facilities when it is reasonably necessary to the construction, operation, repair, maintenance or installation of City facilities in, on or under Monroe Street at AT&T Texas' own expense, and not later than the 121st day after the date notice was given to AT&T Texas; and

WHEREAS, AT&T Texas is willing to participate with the City to incorporate this Adjustment within the City's construction contract, but believes that the City should bear the cost of the Adjustment; and

WHEREAS, AT&T Texas will be forced to adjust and otherwise protect its facilities because the City intends to continue with the Monroe Project, despite the conflict with AT&T Texas'

facilities; and

WHEREAS, AT&T Texas does not wish to waive any claim it might have for the costs of performing the Adjustment or other compensation to which it may be entitled.

NOW, THEREFORE, AT&T Texas and the City hereby agree as follows:

1. AT&T Texas will agree to review the Special Specification which will incorporate the Adjustment within the City's construction contract for the timely completion of the Monroe Project. The City understands and agrees that it will not pursue the Monroe Project, to the extent damage could be caused to AT&T Texas' facilities, until the AT&T Texas facilities have been adjusted.
2. AT&T Texas shall provide contact information for an AT&T Texas representative and shall inspect the work in progress.
3. The City shall hire the appropriate subcontractor from a list approved by AT&T Texas, complete the Adjustment to accommodate the Monroe Project, allow and facilitate inspections by AT&T Texas, and provide AT&T Texas with the ability to audit the Adjustment upon completion.
4. The City and AT&T Texas acknowledge that, upon completion of the Adjustment, AT&T Texas shall continue to own the facilities.
5. The cost of the Adjustment is currently estimated at \$132,930.00, including a construction contingency amount of \$6,330.00.00. The City shall obtain the written approval of AT&T Texas for all change order requests for the Adjustment prior to the City issuing the approved change order to the contractor.
6. Within 30 days of the execution of this Agreement, AT&T Texas will pay the City the estimated costs of the Adjustment with the contingency amount. AT&T Texas will pay the City the estimated costs of a change order affecting the Adjustment within 30 days of approval of the change order by AT&T Texas.
7. The City shall place the AT&T Texas funds in a construction escrow account for the Adjustment, as described below. The unused portion of the funds provided by AT&T Texas under this Agreement shall be returned to AT&T Texas within 30 calendar days after the completion of the Adjustment. The City will provide AT&T Texas with an accounting of the Adjustment disbursements from the escrow account expenses within 30 days of Adjustment completion.
8. The City and AT&T Texas acknowledge that this Agreement and the actions taken pursuant to this Agreement shall not in any way compromise the claim of the City that AT&T Texas is responsible under Chapter 14-11 of the City of

Austin Municipal Code for the costs associated with the Adjustment, or the claim of AT&T Texas that it is not obligated to bear the expense of the Adjustment.

9. The City acknowledges that by entering into this Agreement, AT&T Texas is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of Chapter 14-11 of the City of Austin Municipal Code or to assert any other claim it may possess, at law or in equity, before any tribunal of competent jurisdiction, including without limitation a state or federal court.
10. The City agrees that this Agreement shall constitute a response to the City's 120-day relocation letter regarding the Monroe Project.

Executed effective as of the _____ day of _____, 2006.

**SOUTHWESTERN BELL
TELEPHONE, L.P. d/b/a AT&T TEXAS**

By: _____
Name: _____
Title: _____

THE CITY OF AUSTIN, TEXAS

By: _____
Name: _____
Title: _____