

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND
SOUTHWESTERN BELL TELEPHONE (AT&T)
TO COORDINATE CAPITAL PROJECTS UNDER THE
2017-2022 BOND PROGRAM**

WHEREAS, the City of San Antonio (hereafter referred to as “COSA” or “City”), a home-rule city under the laws of the State of Texas, and Southwestern Bell Telephone Company d/b/a AT&T Texas (hereafter referred to as “AT&T”), a privately-owned utility corporation (collectively referred to as the “Parties”), have agreed to coordinate, where appropriate, COSA’s public works projects and AT&T’s capital infrastructure projects under the City’s 2017-2022 Bond Program; and

WHEREAS, pursuant to Ordinance No. 2017-01-19-0011, the San Antonio City Council authorized a bond election for May 6, 2017, for voter approval of a \$850 million bond program to fund 180 projects designed to improve, enhance, construct and/or acquire existing and new local streets, bridges, sidewalks, drainage facilities, parks, libraries, museum and cultural arts facilities, public safety facilities and neighborhood improvements; and

WHEREAS, on May 6, 2017, the voters of San Antonio approved six bond propositions totaling \$850 million as follows: (1) Proposition 1 – funding of 64 projects, totaling \$445,263,000.00, for improvements in streets, bridges and sidewalks; (2) Proposition 2 – funding of 19 projects, totaling \$138,988,000.00, for drainage and flood control improvements; (3) Proposition 3 – funding of 79 projects, totaling \$187,313,000.00, for parks, recreation and open space improvements; (4) Proposition 4 – funding of 13 projects, totaling \$24,025,000.00, for library, museum and cultural arts improvements; (5) Proposition 5 – funding of 5 projects, totaling \$34,411,000.00, for public safety facilities improvements; (6) Proposition 6 – funding of numerous projects totaling \$20,000,000.00 for neighborhood improvements; and

WHEREAS, AT&T has current and planned multi-year capital infrastructure projects, some of which may jointly be developed under the City’s 2017-2022 Bond Program; and

WHEREAS, COSA and AT&T agree to coordinate additional future projects where appropriate, and if for the benefit of both Parties; and

WHEREAS, COSA and AT&T acknowledge the benefits of coordinating their respective public works projects, where appropriate, in order to reduce project costs, minimize closure of City streets and rights-of-way, reduce inconvenience to the public and expedite project construction; and

NOW THEREFORE, COSA and AT&T mutually consent to enter into this memorandum of agreement (hereafter referred to as “MOA”) on this _____ day of _____, 2017 and agree as follows:

I. Terms of MOA

1. **Joint Projects.** COSA and AT&T shall designate projects as “joint projects,” prior to the selection of any contractors for work on said projects. “Joint projects” shall be defined as capital projects involving both a City project and an AT&T current or planned infrastructure project.
2. **Lead Agency.** COSA shall be the lead contracting agency on all joint projects.
3. **Selection Panel.** COSA shall establish a panel to select Engineers, Architects and other vendors that shall be assigned work on joint projects related to the City’s 2017-2022 Bond Program. AT&T shall be represented on the selection panel.
4. **Review and Approval of Bond-Related Projects.** AT&T shall review and approve engineering plans prior to the initiation of construction of AT&T infrastructure involved in a joint project related to the City’s 2017-2022 Bond Program.
5. **Inspection and Acceptance.** AT&T shall inspect and accept the completion of the construction of AT&T infrastructure involved in all joint projects.
6. **Internet-Based Project Management System.** COSA administers its design and construction management through an Internet-based management system. AT&T and COSA shall conduct communications through this media and the parties shall perform all project-related functions utilizing this database system. These functions include, but are not limited to, correspondence, submittals, requests for information, vouchers, payment requests and processing, amendment, change orders and other administrative activities. AT&T shall review and approve all payment applications and change orders related to AT&T infrastructure through COSA’s Internet-based project management system. Such approval shall be evidence of AT&T’s acceptance of the expenditure and work. AT&T shall sign a business level agreement for participation in COSA’s Internet-based Project Management System and each AT&T Project Team Member shall sign an individual agreement. COSA shall administer the software and shall provide training and access to AT&T identified project team members.
7. **Reimbursement of Cost:** AT&T shall reimburse COSA the then-completed construction costs for AT&T infrastructure involved in joint projects within forty five (45) days of receipt and approval of an invoice from COSA. Invoices shall promptly be submitted by COSA periodically over the course of construction of the project. AT&T

shall pay for project construction that is deemed satisfactory to AT&T. COSA shall pay any amount due to AT&T or its Affiliates which is not applied against the invoiced amounts within thirty (30) days after written demand by AT&T. Invoices received by AT&T more than six (6) months after the provision of the construction shall be deemed untimely and AT&T shall have no obligation to pay such invoices. AT&T may withhold payment for any amount that is in dispute and AT&T may deduct any offset or recoupment claims it or its Affiliates may have against COSA, whether under this Agreement or otherwise.

8. **Construction Services, Performance, and Acceptance.** COSA agrees that all dates agreed upon for construction are firm, time is of the essence and COSA will complete the construction in strict conformance with the Specifications. After construction has been completed, AT&T shall have a reasonable time to inspect the construction and AT&T's acceptance shall not occur until the construction is shown to strictly comply with the Specifications (hereafter referred to as "Acceptance").
9. **Entire Agreement.** The terms contained in this MOA, including any attachments, constitute the entire integrated agreement between COSA and AT&T regarding joint projects. This MOA supersedes all prior oral and written discussions, agreements and understandings of the Parties, if any, with respect hereto. Acceptance of the project construction payment or any inaction by AT&T shall not constitute AT&T's consent to or acceptance of any additional or different terms from that stated in this MOA
10. **Indemnity.** COSA will require its contractor to indemnify, defend and hold harmless AT&T and its affiliates, directors, shareholders, agents and employees (individually and collectively herein referred to as "Indemnitees") from and against any fine, penalty, loss, cost, damage, injury, claim, expense, including reasonable attorneys' fees, or liability (individually and collectively hereafter referred to as "Liabilities"), including, but not limited to, Liabilities associated with: (a) injury to or death of any person; (b) damage to, or loss or destruction of, any property; (c) contamination of or any adverse impact upon the environment; (d) attachments, liens or claims of materialmen or laborers; (e) breach of a Supplier warranty; and (f) infringement of a patent, copyright, trademark, service mark, trade secret or other legally protected proprietary right, where such Liabilities arise out of, result from or are incurred in connection with acts or omissions in connection with this MOA, except for that portion of Liabilities caused by the sole negligence or willful misconduct of AT&T. COSA shall keep Indemnitees fully informed of any such defense and afford Indemnitees, at their own expense, an opportunity to participate in the defense or settlement of such Liabilities.
11. **Information.** Except with AT&T's prior written consent or as required by the Texas Open Records Act, or this MOA, COSA shall not use or provide to others any AT&T business or customer information. Upon completion of this MOA and upon AT&T request, COSA promptly shall return such AT&T information it may possess.

12. **Insurance.** In addition to COSA's contractor's obligation to indemnify, COSA shall require its contractor(s) to maintain, at all times during performance of this MOA, the following minimum insurance coverages and limits and any additional insurance and/or bonds required by law: (a) Workers' Compensation insurance, with benefits afforded under the laws of the State in which Services are to be performed, and Employers Liability insurance, with minimum limits of \$500,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$500,000 for Bodily Injury by disease-each employee; (b) Commercial General Liability insurance, with minimum limits of: (1) \$2,000,000 General Aggregate limit; (2) \$1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; (3) \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; and (4) \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations; (c) Fire Legal Liability sub-limits of \$300,000 are required for lease agreements; (d) If use of a motor vehicle is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired, and non-owned vehicles. Along with City, AT&T and its Affiliates shall be named as an Additional Insured on the Commercial General Liability and Auto policies. City and AT&T agree that companies affording insurance coverage shall have a rating of A- or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key rating Guide for Property and Casualty Insurance Companies. A certificate of insurance stating the types of insurance and policy limits shall be provided to COSA prior to commencement of any work. If a certificate from the contractor is not received by the commencement of any work by the contractor, COSA hereby authorizes AT&T and AT&T has the right, but not the duty, to obtain the project's required and specified insurance on behalf of AT&T and COSA and COSA hereby agrees to compensate AT&T for the acquired insurance coverage(s).
13. **Limitation of Liability.** EXCEPT FOR A PARTY'S OBLIGATION TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THIS MOA FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL NOR PUNITIVE DAMAGES, REGARDLESS WHETHER SUCH PARTY HAS BEEN APPRISED OF SUCH DAMAGES AND REGARDLESS WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, A TORTUOUS ACT OR ANY OTHER THEORY OF LIABILITY.
14. **Taxes.** The prices applicable to work and all monies owed under this MOA shall include all taxes except applicable state sales and use taxes, which taxes AT&T shall pay, provided the taxes are added to the prices and stated as separate items on and at the time the applicable invoice is submitted to AT&T by COSA.
15. **Termination/Cancellation.** AT&T may terminate this MOA in whole or in part at any time upon written notice to COSA. Upon termination, COSA shall invoice AT&T for termination charges, which shall consist of the percentage of the work addressed by this MOA and performed prior to termination, minus the salvage value of any work terminated. AT&T's payment shall be considered a complete and final discharge of any

liability as a result of such termination. In the event that COSA fails to perform, in whole or in part, its obligations under this MOA or otherwise breaches or defaults on its obligation herein and COSA has failed to correct its failure to perform within fourteen (14) days from its receipt of AT&T's notification and intent to cancel, AT&T may elect to cancel this MOA without any financial obligation or Liability on the part of AT&T.

16. **Warranty.** COSA and AT&T warrant that: (a) all work provided in connection with this MOA strictly shall conform to the Specifications; (b) Services shall be provided by qualified personnel, performed in a professional manner and to COSA's and AT&T's reasonable satisfaction; and if any Services are dependent on the work of others, including AT&T, COSA shall inspect such work and inform AT&T of any defects therein, prior to commencing such Services; (c) all work is and shall remain free of any defects, liens and encumbrances of any kind; (d) COSA shall comply with all applicable laws and regulations, including the Executive MOAs and Federal Regulations, a copy of which is attached hereto made a part hereof and labeled as "**Appendix 1**" and, by this reference, made a part of this MOA, and COSA (or its contractor) shall obtain any necessary permits for Services provided in connection with this MOA; (e) COSA solely shall be responsible and liable for all acts and omissions of personnel with whom it contracts to perform work in connection with this MOA, and such personnel solely shall be considered employees, agents or representatives of COSA for the purpose of this MOA; (f) COSA has not offered or provided any consideration to AT&T's employees as an inducement to enter into this MOA; (g) if any work involves a Regulated Substance, COSA shall notify AT&T in writing, prior to performance. After Supplier's notification, AT&T has a right to terminate any affected MOA, without Liability; and (h) COSA shall cause all Services for AT&T work to be performed in conformance with all applicable AT&T work rules, including its Code of Conduct (a copy of which is available upon request).
17. **Miscellaneous Terms.** Except as otherwise may be provided in this MOA or in another document signed by the Party against whom enforcement is asserted, the Parties agree that, through this document: (a) AT&T provides no license or right under any AT&T property, patent, copyright, service or trademark; (b) outside of project documents, COSA shall not use AT&T's name or make any representation which refers to AT&T; (c) COSA shall maintain complete records relating to performance of this MOA, in accordance with Generally Accepted Accounting Principles, and COSA, upon request, shall provide such records to AT&T in order to permit AT&T to audit them to ensure COSA's performance under this MOA; (d) COSA shall not assign or delegate its rights or duties under this MOA; (e) AT&T may complete any Supplier work upon default of COSA under this MOA; (f) any remedy specified in this MOA is in addition to any remedy the contract Parties are entitled in law or equity; (g) if any part of this MOA is unenforceable, the Parties intend for the remaining parts to be enforced; and (h) any term which, by its nature, is intended to survive expiration, termination or cancellation shall so survive.

Term. This MOA shall remain in effect during the entire time period necessary to implement the 2012-2017 Bond Program, unless and until it is superseded by another memorandum of agreements or San Antonio City Ordinance.

18. This MOU time period may be extended by and amendment approved administratively by the Director of the Transportation & Capital Improvement Department and signed by both parties.

19. **Notices.** All Notices to either party by other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

City	Southwestern Bell Telephone Company
City of San Antonio Transportation and Capital Improvements Department Attention: Christie Chapman, Assistant Director P.O. Box 839966 San Antonio, Texas 78283-3966	Southwestern Bell Telephone Company (AT&T) Attention: William Eisele, Director of Construction & Engineering 4119 Broadway San Antonio, Texas 78209

20. **Effective Date.** This MOA shall become effective on the date specified above and upon the signature of both Parties.

IN WITNESS WHEREOF, the Parties hereto agree to enter into this MOA for their mutual benefits.

City of San Antonio

**Southwestern Bell Telephone Company
(AT&T Texas)**

Mike Frisbie, P.E., Director & City
Engineer, Transportation and Capital
Improvements Department

Name/Title

Date

Date