Approval of an agreement in the amount of $22,589.70 with Cox Advanced Services Arkansas, LLC for utility relocations for the Zion Road Construction Project and approval of a budget adjustment.

### Budget Impact:

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**Budget Adjustment:**

- **Remaining Budget:** $4,632,794.82
MEETING OF SEPTEMBER 1, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Garner Stoll, Development Services Director
Chris Brown, City Engineer

FROM: Matt Casey, Engineering Design Manager

DATE: August 6, 2020

SUBJECT: Approval of an agreement in the amount of $22,589.70 with Cox Advanced Services Arkansas, LLC for utility relocations for the Zion Road Construction Project and approval of a budget adjustment.

RECOMMENDATION:
Staff recommends approval of an agreement in the amount of $22,589.70 with Cox Advanced Services Arkansas, LLC (Cox) for utility relocations for the Zion Road Construction Project and approval of a budget adjustment.

BACKGROUND:
Zion Road from College Avenue to Highway 265 was included in the previous Transportation Improvement Bond Program. The first phase of construction between College Avenue and Vantage Drive was completed in 2008. In 2013, the second phase, between Vantage Drive and Highway 265, was approved for funding through the bond program. On May 6, 2014, the Fayetteville City Council approved a contract with MCE. for the design of the second phase of Zion Road. The design was completed in early 2015, but there were not sufficient bond funds remaining at the time to fully fund the construction of the project. On July 16, 2019, the Council approved a contract with MCE to update the plans to include a revised cross section consisting of a three-lane section with a 10’ wide multi-use trail on the north side and a 6’ wide sidewalk on the south side. On July 21, 2020, the Council approved a construction contract with Tri Star Contractors, LLC for the construction of the project. Construction is scheduled to begin in September of 2020.

DISCUSSION:
During the development of our construction plans, Cox identified portions of their communications system that will need to be relocated in order to construct this project. Portions of these relocations are located outside of the existing city right of way and are typically paid for by the City. Cox has provided a proposal of $22,589.70 for this relocation.

BUDGET/STAFF IMPACT:
The roadway and drainage improvements ($4,395,109.35 + $220,000.00 contingency) are funded by the 2019 Transportation Bond Program. There was $4,900,000 allocated in the Transportation Bond Fund for the Zion Road project. The design and land acquisition of this...
project were $33,500 and $67,000.00 respectively from this fund. Construction phase services and materials testing are estimated to be $52,794.00. With this relocation agreement it brings the current Zion Road project total to $4,790,993.05.

**Attachments:**
Cox Agreement
Cox Cost Estimate
Vicinity Map
RELOCATION AGREEMENT

THIS RELOCATION AGREEMENT (the "Agreement") is entered into and effective as of _________, 2020 ("Effective Date"), by and between Cox Advanced Services Arkansas LLC, with offices at 4901 South 48th Street, Springdale, AR 72762 ("Cox") and The City of Fayetteville, Arkansas, a municipal corporation in the State of Arkansas, with an address at 113 West Mountain Street, Fayetteville, AR 72701, ("City"), each a "Party" or jointly the "Parties" under this Agreement.

WHEREAS, Cox owns, operates and maintains outside plant (fiber and coax cable) as described in Exhibit A to this Agreement that Cox uses to provide its customers with communication services (the "Cox Facilities"); and

WHEREAS, City desires that Cox relocate the Cox Facilities as described in Exhibit A for compensation to Cox under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SCOPE OF AGREEMENT

The purpose of this Agreement is for Cox to remove the Cox Facilities from telephone and/or electric company poles detailed in Exhibit A and relocate the Cox Facilities under the terms and conditions of this Agreement.

1. Term and Termination. This Agreement begins on the Effective Date and shall continue until the later of (i) December 30, 2021; or (ii) the date upon which Cox completes the installation of the Cox Facilities and restores the City’s property as provided under this Agreement. If this Agreement is terminated by City prior to completion of the installation, Cox shall be entitled to receive payment for work completed and any costs incurred as of the date of termination. Cox shall also be entitled to complete all tasks necessary to ensure continued functionality of the Cox Facilities, and City shall reimburse Cox for all such work completed and costs incurred.

2. Cox Facilities Removal and Burial. Cox shall remove the Cox Facilities from the poles and relocate such facilities as described in Exhibit A. Cox may use one or more subcontractors to perform the work described herein, provided that Cox shall remain responsible for the work performed by such subcontractors. All work will be performed in a workmanlike manner using industry standards for applicable work, and in accordance with all applicable laws.

3. Payments, Taxes. Upon completion of the relocation of the Cox Facilities, Cox shall invoice the City for twenty-two thousand, six-hundred seventy dollars and thirty-nine cents (USD $22,670.32) (the "Fee"). The City shall promptly pay Cox the Fee to such address as set forth in the Cox invoice. To the extent any sales tax, transfer tax, use tax, gross receipts tax, excise tax, business and occupation tax, or other similar Federal, state and local taxes or charges, related to the work performed under this Agreement shall apply to the Fee, Cox shall be solely responsible for such taxes.

4. Permits. If applicable, Cox will apply for all applicable permits and authorizations to perform the work contemplated by this Agreement and set forth in Exhibit A. Pending proper application by Cox, the City shall grant Cox all required City permits at no cost to Cox.
5. **Access Rights.** The City grants Cox all necessary rights, licenses, and authorizations to place and otherwise relocate and/or bury the Cox Facilities in the City rights of way as described in Exhibit A to this Agreement. In addition thereto, Cox shall have the right to access the City rights of way to maintain, repair, or replace the Cox Facilities as deemed necessary by Cox in its sole discretion. Such rights, licenses and authorizations shall remain in place for so long as Cox has the Cox Facilities located in the City rights of way.

6. **Title to Cox Facilities.** Title, ownership and all use rights in the Cox Facilities shall at all times remain with Cox. Nothing in this Agreement shall grant the City access to, or any rights in, the Cox Facilities.

7. **Risk of Loss.** Cox shall bear the risk of loss to the Cox Facilities unless caused by the negligence of the City, its employees, agents or contractors.

8. **Restoration of City Property.** As part of the work to bury the Cox Facilities, Cox shall restore the ground and landscaping to its original condition, ordinary wear and tear excepted, and shall also repair any damage to City infrastructure (including, but not limited to, streets, sidewalks, waterlines and sewer lines) or reimburse the City the reasonable cost of such repairs.

9. **Force Majeure.** In no event shall either party have any claim or right against the other party for any failure of performance by such other party if such failure of performance is caused by or is the result of (i) causes beyond the reasonable control of such other party, including, but not limited to, third party cable cuts, acts of God, fire, flood, or other natural disaster; (ii) laws, orders, rules, regulations, directions, or actions of governmental authorities having jurisdiction over this Agreement; or (iii) any civil or military action including national emergencies, riots, war, and/or civil insurrections ("Force Majeure").

10. **Limitation of Liability. Except for the Gross NEGLIGENCE or WILFULL MISCONDUCT of Cox, its EMPLOYEES, AGENTS or SUBCONTRACTORS, IN NO EVENT SHALL COX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE, PUNITIVE OR ENHANCED DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, OR BUSINESS HARM) ARISING OUT OF OR RELATING TO THE WORK SET FORTH IN EXHIBIT A. NOTWITHSTANDING ANYTHING TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE, FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE AMOUNTS PAID BY CITY TO COX UNDER THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Unmarked Utilities.** Cox shall have no liability to the City for buried and unmarked equipment located within the work area where the Cox Facilities shall be located.

12. **General Provisions.**

   A. **Attorneys' Fees.** If it becomes necessary for either City or Cox to employ an attorney to enforce compliance with any term or condition of this Agreement, the prevailing Party shall be entitled to reimbursement from the other Party for reasonable attorneys' fees, as determined by the court, and reasonable costs and expenses incurred in such enforcement.

   B. **Notices.** All notices shall be in writing and deemed properly given or made upon receipt if delivered by nationally recognized overnight courier, registered or certified mail, postage prepaid to the

Relocation Agreement 2
addresses listed above: If to Cox, to the attention of; Michael Moore, Planner III if to the City: Matt Casey, Engineering Design Manager.

C. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Arkansas.

D. No Third Party Beneficiaries. Nothing herein shall be construed or interpreted to give any person other than Cox and City any legal or equitable right, remedy, claim, or defense under or in respect of this Agreement. There are no intended third party beneficiaries of this Agreement, except as expressly stated herein.

E. Waiver. A waiver by either Party of a default by the other Party and/or the performance of the other Party's obligations contained in this Agreement shall not be deemed a waiver of the performance of any other obligations or of any subsequent default in the performance of the same or any other obligation contained in this Agreement.

F. Survival. Sections 3, 5, 6, 10, 12 and any other provision which by its nature should survive termination, shall survive the expiration or termination of this Agreement.

G. Entire Agreement: Changes and Modifications. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents, and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed, and delivered by Cox and the City.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as provided below:

City:  

The City of Fayetteville, Arkansas  

Cox Advanced Services Arkansas, LLC

By:  

Print Name:  

Title:  

Date:  

Cox:

By:  

Print Name: Michael A. Moore  

Title: Planner III  

Date: 8/6/2020

Relocation Agreement
EXHIBIT A

Description of Cox Facilities

SCOPE

Cox will:

- Replace zero point five eight (0.58) miles of aerial coax along and crossing Zion Road at the cost of $14,718.08 (Coax New Aerial, CNA)
- Replace zero point eight three (0.83) miles of aerial fiber along and crossing Zion Road at the cost of $24,677.93 (Fiber New Aerial, FNA)
- Replace and transfer riser on one pole at the cost of $371.76 (Coax New Underground, CNU)

COSTS

Nine (9) of the existing seventeen (17) poles are outside of the existing right of way and therefore are reimbursable with equals 52.94% of total cost of project. Coax cost for this project is $15,079.44. This include Coax New Aerial (CNA) and Coax New Underground (CNU) as shown on the BOM & Labor Form. Fiber cost for this project is $24,677.93. This includes Fiber New Underground (FNU) as shown of the BOM & Labor Form. Engineering fees for this project is $2,903.02 which brings the total for the project to $42,670.39 of which 52.94% will be reimbursable.

Total reimbursement of this project is $42,670.39 x 52.94% which totals $22,589.70 of the cost will be borne by the City of Fayetteville. No arbitrary charges have been included in these costs. Construction shall begin within thirty (30) days after all parties have signed this agreement, and completion is anticipated within forty-five (45) to sixty (60) days thereafter.

GENERAL LOCATION DESCRIPTION

This project will consist of replacing aerial coax and aerial fiber attached to Ozark Electric poles running parallel and crossing Zion Road.
## CAPITAL PURCHASE REQUEST

**Project Name:** Zion Relocate  
**Address:** 2295 E Zion Rd 72703  
**City:** FAYETTEVILLE

### Financial Details

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### Other Details

- **Designer:** M. MOORE  
- **Planner:** M. MOORE  
- **Date Designed:** 8/4/2020  
- **Class Category:** Replacement  
- **Map #:** R350282  
- **Cross Street:** Old Missouri Rd  
- **Tie Point:** FV002  
- **Franchise Code:** 983

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**REMARKS:**

Customer's Contribution: $22,589.70
MULTI-USE TRAIL

10' TYP

6'

30' F/F TYP, SEC. "1"

6'

TYPICAL SECTION "1"

10' TRAVEL LANE

10' CENTER LANE

10' TRAVEL LANE

SIDEWALK

18" WIDE CURB & GUTTER

VARIES

MULTI-USE TRAIL

10' TYP

6'

18" WIDE CURB & GUTTER

TYPICAL SECTION "2"

10' MIN. TRAVEL LANE

10' CENTER LANE

10' MIN. TRAVEL LANE

LANE WIDTHS VARY TYPICAL SECTION "2"

VARIES

18" WIDE CURB & GUTTER

6'

EX SW

ZION ROAD IMPROVEMENTS
VANTAGE DR. TO CROSSOVER RD.
2019 BOND PROGRAM

CITY OF
FAYETTEVILLE
ARKANSAS