

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SPECIAL CONSTRUCTION AGREEMENT FOR CONVERSION OF OVERHEAD FACILITIES TO UNDERGROUND BETWEEN THE CITY OF POMPANO BEACH AND BELL SOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T SOUTHEAST; PROVIDING AN EFFECTIVE DATE (\$150,000.00.).

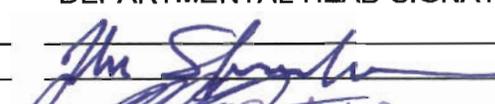
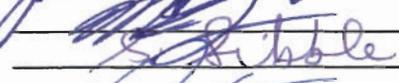
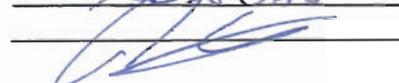
Summary of Purpose and Why:

Burkhardt Construction, Inc., was awarded the construction contract for Briny Avenue Undergrounding and Streetscape Improvements in March 2016. Burkhardt will be installing the underground conduit however their scope does not include the cable installations through these conduits and final cable connections or removal of existing poles and overhead utilities owned by Bellsouth Telecommunications ("AT&T"). These services in the estimated amount of \$150,000 are required to be completed by AT&T. Please find the attached Agreement to be executed between City and AT&T for these services.

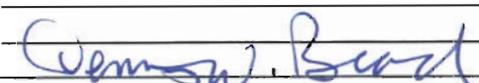
 Accomplishing this item supports achieving Initiative 2.3, Objective 2.3.4 "Undergrounding Utility Lines on Briny" identified in the City's Great Places Strategy.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Engineering
- (2) Primary staff contact: John Sfiropoulos, PE / Horacio Danovich Ext 7044 / 7834
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: \$150,000.00, CIP 12-208, Account No. 302-7486-530-6511

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Engineering	<u>6/1/16</u>	APPROVE	
City Attorney	<u>6/2/16</u>	APPROVE	
Finance	<u>6/3/16</u>	APPROVE	
Budget	<u>6/2/16</u>	APPROVE	

Advisory Board
 Development Services Director
 City Manager 



ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
_____	_____	_____	_____
_____	_____	_____	_____
2nd Reading	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-857

June 1, 2016

TO: John Sfiropoulos, P.E., City Engineer

FROM: Mark E. Berman, City Attorney

RE: Resolution – Special Construction Agreement for Conversion of Overhead Facilities to Underground

Pursuant to your memorandum dated May 24, 2016, Engineering Department Memorandum No. 16-81, I have prepared and attached the following form of Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SPECIAL CONSTRUCTION AGREEMENT FOR CONVERSION OF OVERHEAD FACILITIES TO UNDERGROUND BETWEEN THE CITY OF POMPANO BEACH AND BELL SOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T SOUTHEAST; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



MARK E. BERMAN

/jrm
l:cor/engr/2016-857

Attachment

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SPECIAL CONSTRUCTION AGREEMENT FOR CONVERSION OF OVERHEAD FACILITIES TO UNDERGROUND BETWEEN THE CITY OF POMPANO BEACH AND BELL SOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T SOUTHEAST; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and Bellsouth Telecommunications, LLC d/b/a AT&T Southeast, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Bellsouth Telecommunications, LLC d/b/a AT&T Southeast.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

5/12/16

**SPECIAL CONSTRUCTION AGREEMENT
For Conversion of Overhead Facilities to Underground**

Project #: 9472263

Authority: 4EA65075B

AT&T Contact: Wayne Palomino

Customer Name: City of Pompano Beach

Customer Number: 954 545-7009

Work Site Address: Briny Ave

Telephone: 954 476-2904

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

1. **Special Construction Work & Consideration.** This Agreement is for the Special Construction Work described on *Exhibit 1*, attached hereto and incorporated herein by this reference ("Special Construction Work"). Exhibit 1 includes conditions precedent to AT&T commencing the Special Construction Work ("Conditions Precedent"). As consideration for the Special Construction Work, Customer agrees to pay AT&T for the work on an "actual cost" basis. The Customer affirms that the Estimated Special Construction Work Charges below is an estimate and that the actual costs incurred by AT&T may be higher. Said estimated cost is subject to change due to factors including, but not limited to, changing conditions in the field or changes in cost of labor or materials. Customer agrees to make advance payment of 100% of the estimated cost totaling \$150,000.00 ("Estimated Special Construction Work Charges"), \$0.00 of which Customer has previously paid to AT&T, such that \$150,000.00 is due and payable. Customer will pay such amount to AT&T within 30 days following full execution of this Agreement. **Payment of such amount in full, is required before the Special Construction Work will begin.** Payment shall be made by mail to AT&T's offices at 600 North Pointe Parkway, Alpharetta, GA, 30005, or to such other address as AT&T may designate in writing. Upon completion of the work, AT&T will compute the actual cost of the work ("Special Construction Work Charges"). Any difference between the amount of the advance payment and the Special Construction Work Charges will either be paid by the Customer to AT&T within 30 days of Customer's receipt of an invoice therefor (in the event actual exceeds estimated) or refunded to the Customer by AT&T (in the event actual is less than estimated).
2. **Cost Estimate.** The Estimated Special Construction Work Charges amount is valid for 90 days from May 12, 2016. If this Agreement is not fully executed within the said period, then AT&T may require the Customer to request a new cost estimate, and the Estimated Special Construction Work Charges amount may change.

3. **Changes in Scope of Work or Field Conditions.** If the Customer initiates changes in the scope of the work after the date of this Agreement or there exists a condition in the field or other relevant circumstance discovered after the date of this Agreement that is different from the conditions or circumstances that were assumed in preparing the Estimated Special Construction Work Charges, AT&T may require the Customer to request a new cost estimate, the Estimated Special Construction Work Charges amount may change and the parties will cooperate to sign an amendment to this Agreement incorporating any any relevant changes to the Estimated Special Construction Work Charges or scope of work.
4. **Breach; Termination.** If either party breaches any material provision in this Agreement, then the other party may terminate this Agreement by written notice to the breaching party; provided that, prior to any such notice of termination, the other party provides written notice of the breach to the breaching party, and the breaching party fails to cure the breach within 30 calendar days from receipt of the notice of the breach. The time to cure shall be extended for a reasonable time to allow for cure if the breach cannot be cured within 30 calendar days and if the breaching party continues expeditiously to cure.
5. **Early Termination.** In event of termination of this Agreement for any reason in advance of completion of the Special Construction Work, in addition to any other remedies that may be available to AT&T, AT&T shall have the right to retain any Estimated Special Construction Work Charges previously paid by the Customer that compensate AT&T for Special Construction Work performed, and AT&T may complete any segment of the Special Construction Work then in progress. Following such termination, AT&T shall return to the Customer any such portion of such prior payment that is in excess of such amounts that compensate for Special Construction Work performed. If actual costs incurred by AT&T for Special Construction Work performed exceed the prior payments, the Customer shall be responsible to pay any such excess amount within 30 days following receipt of an invoice from AT&T.
6. **Force Majeure; Time to Complete.** Any information provided by AT&T, its agents servants or employees that the project will be complete by a certain date or within certain time period is an estimate and not binding on AT&T, its agents, servants or employees. Estimated completion dates and the Special Construction Work are subject to circumstances, including without limitation, changing conditions in the field, and force majeure conditions, including, without limitation, weather, labor disputes, vendor/contractor disputes and other conditions or circumstances outside of AT&T's control.
7. **Damages; No Damages for Delay.** In the event of termination of this Agreement for any reason in advance of completion of Special Construction Work, the Customer shall have no claim or remedy against AT&T, except a claim to collect any excess payment amount, as set forth in Section 5. In the event of any claims arising from this Agreement, neither party shall liable for any consequential, incidental or indirect damages. Under no circumstances will

AT&T be held liable to Customer, Customer's agents, servants, contractors or employees for any alleged delay in the Special Construction Work.

8. Severability. Any provision of this Agreement held by 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.

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

10. 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.

11. 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.

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

13. 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.

14. Interpretation. The parties agree that this Agreement shall not be interpreted in favor or against either 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.

15. Applicable Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Florida without regard to Florida conflict of law principles.

16. Attorneys' fees. If either party seeks to enforce its rights under this Agreement 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.

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

18. Indemnification and Hold Harmless. Subject to applicable law and without waiver by the Customer of any relevant sovereign immunity rights under Florida

law, Customer, Customer's agents, servants, contractors and employees hereby agree to indemnify and hold harmless AT&T and its employees, agents and contractors from and against any and all claims, costs, and expenses, judgments or actions for damage to property or injury or death to persons and/or arising from or relating to the work that is the subject of this Agreement, if and to the extent any such claims are caused by the acts or omissions of the Customer, Customer's agents, servants or employees.

11. 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.

EXHIBIT 1

[TO BE REVISED TO REFLECT SPECIFIC PROJECT; BELOW TERMS ASSUME CUSTOMER INSTALLATION OF CONDUIT IN PUBLIC ROW]

The Special Construction Work that is the subject of the Agreement to which this Exhibit 1 is attached is as follows:

The work area is the area shown on **Attachment A** ("Work Area"). The Special Construction Work is the following work within the Work Area: Installation by AT&T of underground cable and related aboveground equipment (collectively, the converted system) to replace AT&T aerial facilities, including cables, terminals, service wires, poles, anchors and guys, in the Work Area; cutover of existing communications service on such aerial facilities to converted system; and removal of the aerial facilities and any AT&T-owned poles following cutover, resulting in conversion of the aerial facilities to underground. The work does not include conversion to underground or removal of any facilities, such as poles, owned by parties other than AT&T.

In addition to any conditions precedent to AT&T commencing the Special Construction Work identified in the Agreement to which this Exhibit 1 is attached, the following shall be Conditions Precedent to AT&T commencing the work and shall be obligations of the Customer where specified:

- A. **Conduit.** At no cost to AT&T, the Customer shall (1) install the 4" Schedule 40 or equivalent conduit designated for AT&T and the Service Conduit identified in C below as shown on the plans prepared by Utility Engineering Inc. dated October 10th, 2014 ("Conduit Plans"), (2) install the related Primary Splice Boxes designated for AT&T ("Splice Boxes") as shown on the Conduit Plans to provide adequate access points support structures, and (3) transfer ownership to AT&T of the above-referenced 4" inch conduit, Service Conduit and Splice Boxes (collectively, "AT&T Conduit System") as described below. Upon completion of construction of the AT&T Conduit System, the Customer shall notify AT&T. AT&T shall promptly thereafter be afforded the opportunity to inspect the AT&T Conduit System and shall notify the Customer in writing of any observed deficiencies. Upon correction by the Customer or its contractor(s) of all noticed deficiencies, the Customer shall notify the AT&T, and the AT&T shall be afforded an opportunity to re-inspect and notify the Customer of approval or any further observed deficiencies (in which case the above process shall again apply). After approval, the Customer shall transfer ownership of the AT&T Conduit System free of any liens or encumbrances, and AT&T shall thereafter own and have sole use of the AT&T Conduit System. In the event that any deficiencies are later discovered in the AT&T Conduit System (namely, deficiencies that occurred in connection with the construction and installation), the Customer shall be the responsible party at the Customer's cost to correct or arrange for correction by appropriate contractor(s) of the deficiencies during the warranty period promptly

following notice from AT&T. Such warranty period will extend for one (1) year from the date of transfer of ownership of the AT&T Conduit System. Transfer of ownership to AT&T shall be memorialized by the Customer's delivery to AT&T of a Bill of Sale in the form attached as **Attachment B**.

B. **Permits.** At no cost to AT&T, the Customer shall grant to AT&T any necessary permits for the installation by AT&T in Customer right-of-way of the following: any portions of the AT&T Conduit System within such right-of-way as well as AT&T pedestal terminals to be installed adjacent to each Splice Box (or at such alternate locations as may be necessary and approved by the Customer in the event of later changes to installation locations due to field conditions or other circumstances). If the Customer does not grant separate permits, this Agreement shall constitute Customer authorization for installation and maintenance of such facilities and the AT&T Conduit System in the Customer right-of-way. Receipt of any necessary permits from the Customer or any other relevant permitting agencies is a condition precedent to the Special Construction Work. Customer shall be responsible for any future relocation costs arising from a future request that any portion of the converted system be relocated from or within the public right-of-way.

C. **Service Drops.** At no cost to AT&T, the Customer shall have caused the property owners of each and all properties within the Work Area (each, a "Residence") to do the following (or the Customer shall do the following): Install one - 1" PVC Schedule 40 conduit from each AT&T network interface device ("NID") on each Residence to the relevant Splice Box (as shown on the Conduit Plans) for the relevant Residence. The Customer shall cause each property owner of a Residence to grant to AT&T the exclusive right to use the above conduit on the Residence property for installation of an AT&T service drop.

D. Further Conduit Specifications. In instances where a joint trench will be dug for the installation of AT&T's facilities and the power company's facilities, the power company's FPL's facilities shall be placed at the bottom of the joint trench. Any conduit referenced in A. above placed for AT&T's use (whether in a single or joint trench) shall be at a minimum depth of 12" below final grade, and any conduit referenced above placed for AT&T's use (whether in a single or joint trench) shall be at a minimum depth of 6" below final grade. For all conduit referenced in this Exhibit 1 placed for AT&T's use, there shall be at least a 12" vertical separation with well tamped soil backfill between AT&T's facilities and primary or secondary power facilities. All conduits must be equipped with a pull string.

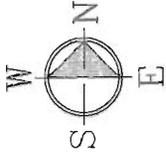
E. **Other.** Removal of other companies' aerial attachments on jointly used poles is necessary prior to AT&T's removal of its aerial facilities. The Customer will notify residents of this project and shall notify AT&T and residents of the name and contact information for a representative to receive questions or complaints from Customer residents about the Customer's project that is the subject of this Agreement. AT&T may refer such questions or complaints to the Customer's representative. In the event

other conditions arise that are reasonably necessary as conditions to the Special Construction Work, AT&T will inform the Customer, and the Customer will address the conditions.

F. Timing, Conditions Precedent. Following 1 year after execution of this Agreement, in the event Conditions Precedent have not been satisfied, AT&T may terminate this Agreement by notice to the Customer anytime thereafter, until the Conditions Precedent have been satisfied (and Section 5 of the Agreement to which this Exhibit 1 is attached shall apply in the event of such early termination). When the Customer believes the Conditions Precedent have been satisfied, the Customer will notify AT&T in writing, and AT&T shall determine thereafter whether the Conditions Precedent have, in fact, been satisfied. If AT&T does not believe that they have been satisfied, AT&T will notify the Customer.

Attachment A - Work Area

BRINY AVENUE



NOT TO SCALE

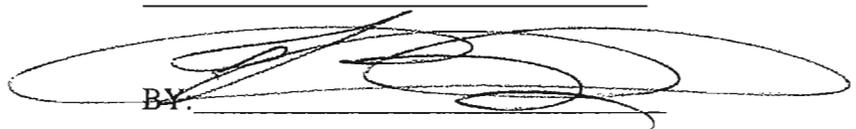


**Attachment B
Bill of Sale**

FOR GOOD AND VALUABLE CONSIDERATION The City of Pompano Beach does hereby bargain, sell, transfer and convey unto BellSouth Telecommunications, LLC d/b/a AT&T Southeast all right, title and interest in and to the AT&T Conduit, as described in that certain Agreement between said parties dated May 12, 2016.

TO HAVE AND TO HOLD unto the said Grantee forever.

IN WITNESS WHEREOF, the undersigned, has executed this Bill of Sale this 12TH day of MAY, 2016.


BY: _____

NAME/TITLE: HENRY COLATS
AREA MGR OSP PLNG & ENG DESIGN

"CORPORATION":

Witnesses:

[Handwritten signatures of two witnesses]

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T SE
Corporation Name

[Handwritten signature]

Signature

AREA MGR OSP PLNG-d ENG DESIGN
Title

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 12th day of May, 2016 by Hank Coleas, as Area Mgr of AT&T, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL: NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

[Handwritten signature: Martina A Barrett]

Commission Number

MARTINA BARRETT

FF229309



"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

