



BCC Mtg. Date: October 4, 2016

Interoffice Memorandum

September 1, 2016

TO: Mayor Teresa Jacobs
and the Board of County Commissioners

FROM: Mark V. Massaro, P.E., Director, Public Works Department

CONTACT PERSON: **Raymond Williams, P.E., Acting Manager**
Engineering Division, Public Works Department

PHONE NUMBER: (407) 836-7908

SUBJ: **Utility Relocation Agreement between Orange County and AT&T Florida
for the Wallace Road at Dr. Phillips Blvd. Intersection Project**

Orange County's improvements to Wallace Road at Dr. Phillips Blvd. consists of adding a left turn lane westbound into the YMCA and an additional right turn lane eastbound onto Dr. Phillips Blvd. The Utility Relocation Agreement between Orange County and Bellsouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) is required as part of the roadway construction to relocate AT&T utility facilities. Orange County shall be responsible for all costs and expenses incurred in relocating AT&T utility facilities because the facilities exist within a dedicated utility easement. The total reimbursable costs are estimated at \$5,194. The Public Works Engineering Division, Risk Management, and the County Attorney's Office have reviewed the agreement and find the terms and conditions acceptable.

Action Requested: Approval and execution of Utility Relocation Agreement by and between Orange County and Bellsouth Telecommunications, LLC d/b/a AT&T Florida for the relocation of utility facilities on Wallace Road at Dr. Phillips Blvd. District 1.

MVM/RLAW/vp

Attachments:
Signed AT&T Agreement (2)

BCC Mtg. Date: October 4, 2016

Prepared by and return to:

Katherine W. Latorre
Assistant County Attorney
Orange County Attorney's Office
P.O. Box 1393
Orlando, FL 32802

Project: Wallace Road at Dr. Phillips Blvd. Intersection Project

UTILITY RELOCATION AGREEMENT

This Utility Relocation Agreement ("Agreement"), effective as of the latest date of execution, is made and entered into by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("COUNTY"), and BELLSOUTH TELECOMMUNICATIONS, LLC, a Georgia limited liability company, d/b/a AT&T FLORIDA ("AT&T") (AT&T and COUNTY are collectively referred to herein as the "PARTIES").

WITNESSETH

WHEREAS, COUNTY is constructing the Wallace Road at Dr. Phillips Boulevard Intersection Project ("Project") on Wallace Road, Orlando, Florida; and

WHEREAS, the Project impacts certain AT&T utility facilities ("Facilities") located on real property abutting the Wallace Road right-of-way and owned by the Dr. P. Phillips Foundation, a Florida non-for-profit corporation, having its principal place of business in the County of Orange, ("Dr. Phillips Foundation Easement") pursuant to that Deed of Easement recorded in the Orange County Official Record Book 10782, Page 9181 and attached hereto as **Exhibit "A;"** and

WHEREAS, COUNTY has requested that AT&T remove the Facilities from the Dr. Phillips Foundation Easement and relocate them to a different location inside the same easement to accommodate the Project; and

WHEREAS, the parties desire to memorialize their mutual understanding of the terms and conditions of the relocation of the Facilities as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, it is agreed by both parties as follows:

1. Consistent with the terms of this Agreement, AT&T shall relocate its Facilities from their current location in the Dr. Phillips Foundation Easement to another location in the same easement, as depicted in **Exhibit "B,"** attached hereto and incorporated herein by this reference ("Relocation"). The estimated timeframe for completion of the Relocation is 60 days from the effective date of this Agreement. It is understood that such timeframe is an

estimate and may be extended due to circumstances outside of AT&T's control.

2. COUNTY agrees that all costs and expenses incurred by AT&T associated with the Relocation shall be paid by COUNTY after receipt of invoices for such costs and expenses, in accordance with the terms outlined below.
3. Based on the Project 100% construction plans dated June 2015, submitted by COUNTY, and designed by GTC Engineering Corporation, AT&T has prepared a good faith estimate for Relocation ("Estimate"), which explains in detail the methods, procedures, and assumptions upon which it is based. The Estimate is attached hereto as **Exhibit "C,"** and is incorporated herein by this reference. The Estimate may be subject to change due schedule or duration of the construction work. COUNTY shall be responsible for payment of actual costs incurred by AT&T that do not exceed such Estimate by more than twenty five percent (25%). The Estimate shown in **Exhibit "C"** is an estimate. The final charges to be paid by COUNTY shall be based upon actual construction costs at the time of construction.
4. Invoices from AT&T shall be accompanied by supporting documentation, showing costs incurred by AT&T. AT&T may submit one or more invoices to the COUNTY for payment, following incurring the costs identified on the invoices. COUNTY shall submit payment to AT&T in accordance with this Agreement and the Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes (2015), as may be amended, but in any event within sixty (60) days of receipt by a COUNTY employee authorized to accept such proof of payment.
5. During construction, COUNTY shall allow AT&T continuous, unobstructed access to all the Facilities until the Relocation is complete.
6. For the duration of this Agreement, COUNTY and AT&T, and their respective agents and/or contractors and subcontractors shall each provide and maintain insurance or self-insurance coverage of such types and in such amounts as may be deemed necessary by each party. Such insurance or self-insurance shall include at a minimum workers' compensation and employers' liability, business automobile liability and commercial general liability coverage. COUNTY and AT&T shall be included as additional insured on all liability policies maintained by their respective agents, contractors and subcontractors. Neither party to this Agreement or its officers and employees shall, by this Agreement, be deemed to assume any liability for the acts, omissions and/or negligence of the other party. Each party shall defend, indemnify and hold the other party harmless from all claims, damages, actions, losses, suits, judgments, fines, liabilities, costs and expenses arising out of or resulting from the negligent performance of its respective operations under the Agreement. Notwithstanding the foregoing, such indemnification by COUNTY shall be subject to the limitations provided in section 768.28, Florida Statutes, as may be amended, and no further waiver of

8. This Agreement is governed by the Laws of the State of Florida and appropriate venue is only in the Ninth Judicial Circuit of Orange County, Florida.
9. This Agreement and its attached exhibits constitute the entire Agreement between the parties and supersede any previous understanding between the parties. Changes to this Agreement affecting the terms must be made in writing by addendum and approved and executed in substantially the same manner as this document. If any provision in this Agreement is invalidated, all remaining provisions shall continue in full force and effect, unless terminated.
10. AT&T hereby acknowledges that time is of the essence to the lawful performance of the duties and obligations contained in this Agreement.
11. Neither party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from any cause beyond the reasonable control of the affected Party, including but not limited to, fire, flood, embargo, war, an act of war (whether war is declared or not), insurrection, riot, civil commotion, strike,

lockout or other labor disturbance, act of god or act, omission or delay in acting by any governmental authority or the other Party or an activity or operational or service requirement of a Party as an electric utility; provided, however, that the Party claiming the right to excuse performance by reason of force majeure shall use reasonable commercial efforts and diligence to avoid or remove such cause of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such cause is removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure.

12. The terms, provisions, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of AT&T and COUNTY, their respective successors and assigns; provided however, that this Agreement shall not be assignable without the prior written consent of the other party hereto.
13. Nothing herein shall be construed as a waiver of COUNTY's sovereign immunity pursuant to section 768.28, Florida Statutes, as may be amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year below names signatures.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

TJ Orange County Mayor

Date: 10.4.16

ATTEST: Martha O. Haynie. County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*

Deputy Clerk

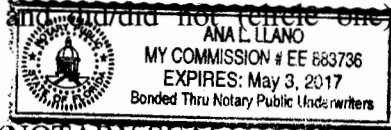
Printed Name: Katie Smith

BELLSOUTH TELECOMMUNICATIONS, LLC
d/b/a "AT&T Florida"

By: B. Macias Jr.
Print Name: B. MACIAS JR.
Title: DIRECTOR

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 12th day of August, 2016 by B. MACIAS JR., as DIRECTOR of BELLSOUTH TELECOMMUNICATIONS, LLC, a foreign limited liability company d/b/a "AT&T Florida," who is personally known to me and has produced _____ as identification ~~and did not refer to one~~ take an oath.



(NOTARY SEAL)

Notary Public, State of Florida

Name: ANA L. LLANO
Notary Commission No. EE 883736
My Commission Expires: 5/3/2017

EXHIBIT A

(Dr. Phillips Foundation Easement)

JUL 29 2014 KHBS

Project: Wallace Road – YMCA Dr. Phillips (RAC)

DOC# 20140384247 B: 10782 P: 9181
07/30/2014 04:24:17 PM Page 1 of 5
Rec Fee: \$44.00
Deed Doc Tax: \$1,754.00
DOR Admin Fee: \$0.00
Intangible Tax: \$0.00
Mortgage Stamp: \$0.00
Martha O. Haynie, Comptroller
Orange County, FL
SA - Ret To: TROY FINNEGAN ESQ



ROAD RIGHT-OF-WAY AND APPURTENANCES EASEMENT

THIS INDENTURE, Made this 13th day of June, A.D. 2014, between THE DR. P. PHILLIPS FOUNDATION, a Florida not-for-profit corporation, having its principal place of business in the county of Orange, whose address is 7400 Dr. Phillips Blvd., Orlando, Florida 32819-5146, GRANTOR, and ORANGE COUNTY, a charter county and a political subdivision of the state of Florida, whose address is P.O. Box 1393, Orlando, Florida 32802-1393, GRANTEE.

WITNESSETH, That the GRANTOR, in consideration of the sum of \$1.00 and other valuable considerations, paid by the GRANTEE, the receipt whereof is hereby acknowledged, does hereby give and grant to the GRANTEE and its assigns, a non-exclusive easement for road right-of-way purposes, with full authority to enter upon, construct, and maintain, as the GRANTEE and its assigns may deem necessary, a public road right-of-way and appurtenances over, under, upon, and through the following described lands situate in Orange County aforesaid to-wit ("Easement Area"):

SEE ATTACHED SCHEDULE "A"

Property Appraiser's Parcel Identification Number:

a portion of

27-23-28-0000-00-025

TO HAVE AND TO HOLD said easement unto said GRANTEE and its assigns forever, subject to the terms and conditions set forth hereinbelow.

THE GRANTEE herein and its assigns shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with normal operation or maintenance of the road right-of-way and/or appurtenances, out of and away from the herein granted easement, and the GRANTOR, its heirs, successors, and assigns agree not to build, construct, or create, nor permit others to build, construct, or create any buildings or other structures in the Easement Area that may interfere with the normal operation or maintenance of the road right-of-way and/or appurtenances. All utilities placed in the Easement Area will be underground. The GRANTEE, at the GRANTEE's cost and expense, shall be responsible for the relocation of any existing utility facilities in the Easement Area and the construction of any roadway improvements in the Easement Area.

This easement is non-exclusive. The GRANTOR shall have the authority to use and to authorize others to use the Easement Area in any manner consistent with Grantee's use and rights. The GRANTOR reserves the right, but is not obligated, to cultivate and care for the grass, trees and shrubbery within said Easement Area, at any time the GRANTEE has failed to do so.

Project: Wallace Road – YMCA Dr. Phillips (RAC)

To the extent permitted by law, and without waiving the GRANTEE's sovereign immunity and Florida Statutes §768.28, the GRANTEE covenants and agrees to indemnify, protect, defend, and hold harmless the GRANTOR from and against any and all claims, actions, causes of action, loss, damage, injury, liability, cost or expense, including without limitation attorneys' fees (whether incurred before, during or after trial, or upon any appellate level, or in arbitration, mediation, or in any proceeding in bankruptcy or insolvency), arising from the GRANTEE's negligent use of the Easement Area.

SIGNATURE PAGE AND SCHEDULE "A" FOLLOW

Project: Wallace Road – YMCA Dr. Phillips (RAC)

IN WITNESS WHEREOF, the said GRANTOR has caused these presents to be executed in its name by Kenneth D. Robinson, its President.

THE DR. P. PHILLIPS FOUNDATION,
a Florida not-for-profit corporation

Signed, sealed, and delivered
in the presence of:

Troy W. Finnegan
Witness

Troy W. Finnegan
Printed Name

LuAnn McCollum
Witness

LuAnn McCollum
Printed Name

By: Kenneth D. Robinson
Kenneth D. Robinson, President

(Corporate Seal)

(Signature of TWO Witnesses required by Florida Law)

**STATE OF FLORIDA
COUNTY OF ORANGE**

I HEREBY CERTIFY, that on this 13th day of June, 2014, before me personally appeared Kenneth D. Robinson, as President of THE DR. P. PHILLIPS FOUNDATION, a Florida not-for-profit corporation, to me known to be, or who has produced _____ as identification, the individual and officer described in and who executed the foregoing conveyance and acknowledged the execution thereof to be his free act and deed as such officer thereunto duly authorized, and that the official seal of said corporation is duly affixed thereto, and the said conveyance is the act and deed of said corporation.

Witness my hand and official seal this 13th day of June, 2014.

(Notary Seal)



TROY W. FINNEGAN
MY COMMISSION # EE 176184
EXPIRES: July 6, 2016
Bonded Thru Budget Notary Services

Troy W. Finnegan
Notary Signature
Troy W. Finnegan
Printed Notary Name

This instrument prepared by:

Troy Finnegan, Esq.
General Counsel
Dr. Phillips Charities
7400 Dr. Phillips Blvd.
Orlando, FL 32819

Notary Public in and for
the county and state aforesaid

My commission expires: July 6, 2016

SCHEDULE "A"

Description :


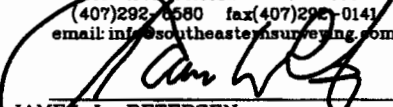
A portion of the SE 1/4 of the NE 1/4 of Section 27, Township 23 South, Range 28 East, Orange County, Florida being more particularly described as follows :

Commence at the Northeast corner of the SE 1/4 of the NE 1/4 of Section 27, Township 23 South, Range 28 East, Orange County, Florida; thence S 89°56'40" W a distance of 75.00 feet along the North line of said SE 1/4 of the NE 1/4 to the Point of Beginning; said point being on a Northerly projection of the West right of way line of Dr. Phillips Boulevard per Official Records Book 2490, Page 1235, Public Records of Orange County, Florida; thence S 00°06'25" W a distance of 67.12 feet along said Northerly projection and along the West right of way line of said Dr. Phillips Boulevard to a point; thence leaving said West right of way line N 44°53'35" W a distance of 24.14 feet to a point on a line that is 50.00 feet South of and parallel with the said North line; thence S 89°56'40" W a distance of 538.36 feet along said parallel line to a point; thence N 00°03'20" W a distance of 20.00 feet to a point on a line that is 30.00 feet South of and parallel with said North line; thence S 89°56'40" W a distance of 701.61 feet along said parallel line to a point on the West line of said SE 1/4 of the NE 1/4; thence N 00°01'10" E a distance of 30.00 feet along said West line to a point on the North line of said SE 1/4 of the NE 1/4; thence N 89°56'40" E a distance of 1257.15 feet along said North line to the Point of Beginning.

Containing 1.12 acres more or less.

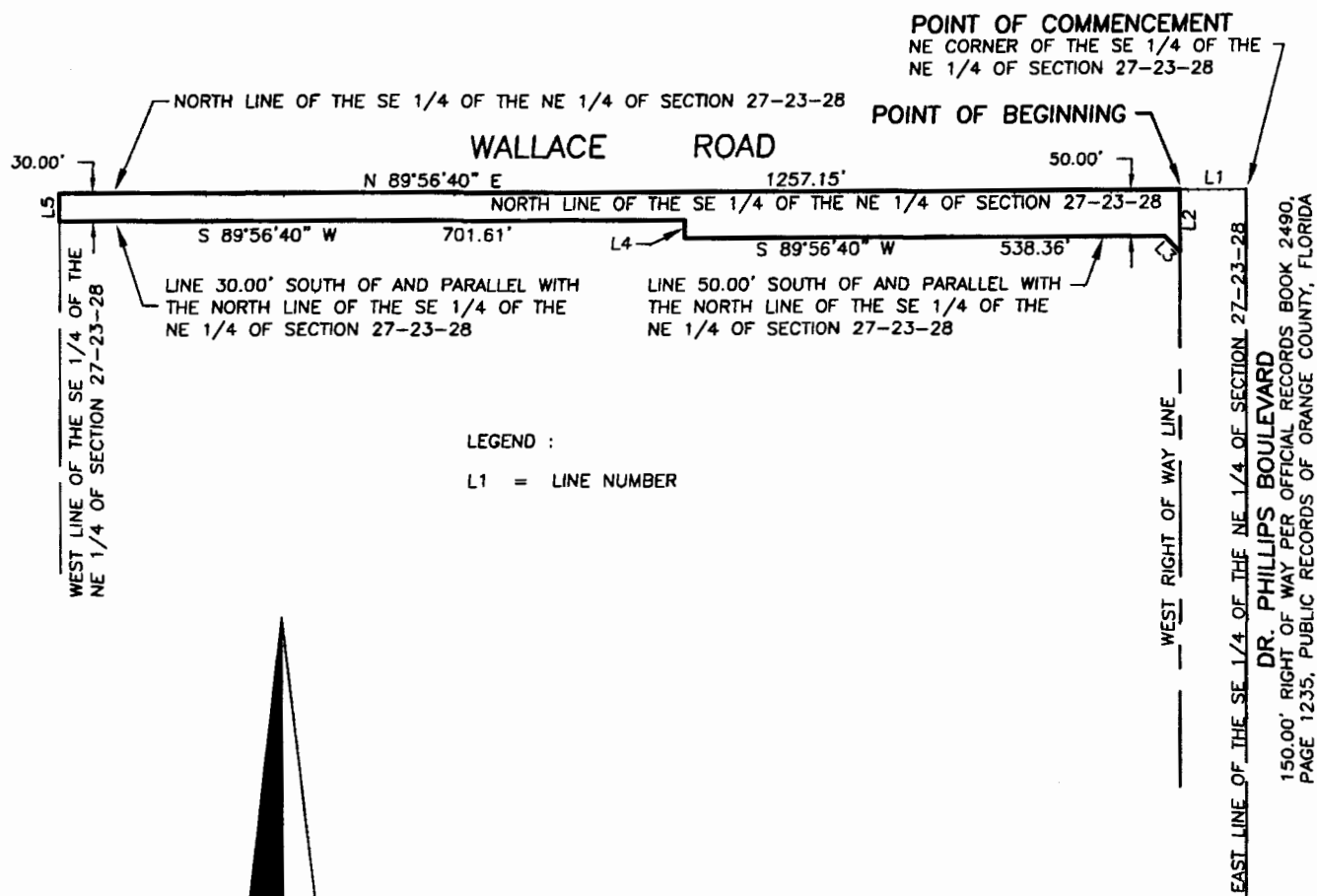
SURVEYORS REPORT

1. Bearings shown hereon are based on the North line of the SE 1/4 of the NE 1/4 of Section 27, Township 23 South, Range 28 East being N 89°56'40" E assumed.
2. I hereby certify that the "Sketch of Description" of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Minimum Technical Standards for Land Surveying Chapter 5J-17.050-.052 requirements.

DESCRIPTION	Date: 12/31/2013 KR		CERTIFICATION NUMBER LB2108 56925006
FOR CENTRAL FLORIDA YMCA	Job No.: 56925	Scale: 1"=200'	 SOUTHEASTERN SURVEYING AND MAPPING CORPORATION 6500 All American Boulevard Orlando, Florida 32810-4350 (407)292-6580 fax(407)292-0141 email: info@southeasternsurveying.com  JAMES L. PETERSEN
	REVISED: 1/10/14 BMD Chapter 5J-17.050-.052, Florida Administrative Code requires that a legal description drawing bear the notation that THIS IS NOT A SURVEY.		
	SHEET 1 OF 2 SEE SHEET 2 FOR SKETCH		

SKETCH OF DESCRIPTION

LINE TABLE		
LINE	LENGTH	BEARING
L1	75.00'	S 89°56'40" W
L2	67.12'	S 00°06'25" W
L3	24.14'	N 44°53'35" W
L4	20.00'	N 00°03'20" W
L5	30.00'	N 00°01'10" E



NOTE :

NOT VALID WITHOUT SHEET 1.

REVISED: 1/10/14 BMD

Drawing No. 56925006

Job No. 56925

Date: 12/31/2013

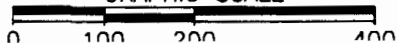
SHEET 2 OF 2

See Sheet 1 for Description

THIS IS NOT A SURVEY

1" = 200'

GRAPHIC SCALE



SOUTHEASTERN SURVEYING
AND MAPPING CORPORATION
6500 All American Boulevard
Orlando, Florida 32810-4350
(407)292-8580 fax(407)292-0141
Certification Number LB-2108

EXHIBIT B

(Facility Relocation)

See attachment for location of existing and proposed facility

EXHIBIT C

(Estimate)

The relocation of the AT&T Florida buried cable facilities within the Dr Phillips Foundation Easements requested by Orange County will require the following:

AT&T Florida will place approximately 300' of buried 50pr cable by trenching and/or directional bore, cutover and remove from service the existing 50pr cable within the same said easement as shown on attachment in exhibit "B".

The relocation is required due to the Orange County Intersection Improvements of Wallace Rd & Dr Phillips Blvd.

The estimated cost for AT&T Florida to place proposed buried 50pr cable, cutover and remove from service existing 50pr in conflict with the Orange County Intersection improvements has been determined to be at \$5,193.75 from the latest information available. This is only an estimated cost and may vary depending on working services at the time of cutting over of existing facilities.