

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2168.11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN AND BELLSOUTH TELECOMMUNICATIONS, INC. IN CONNECTION WITH THE CONVERSION OF CERTAIN OVERHEAD FACILITIES; AUTHORIZING AND TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION; AUTHORIZING THE TOWN TO EXPEND BUDGET COSTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Golden Beach, Florida (the "Town") desires that Bellsouth Telecommunications, Inc., d/b/a AT&T Southeast ("AT&T"), convert certain overhead facilities with Phase 2 of the Town's Capital Improvement Program (the "Conversion Area") to underground facilities; and

WHEREAS, in connection with the conversion to underground facilities, the Town desires to enter into those agreements and/or documents as may be required by AT&T, including the Special Construction Agreement (the "Agreement") substantially in the form attached to this Resolution as Exhibit "A"; and

WHEREAS, the Town Council believes that it is in the Town's best interest to convert existing overhead facilities in the Conversion Area to underground facilities and enter into the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved; Execution of Agreement. That the Agreement is hereby approved in substantially the form attached hereto as Exhibit "A" and the Mayor and Town Manager are authorized to execute the Agreement on behalf of the Town, once approved by the Town Attorney.

Section 3. Implementation. The Mayor and Town Manager are authorized to take any and all action which is necessary to implement the Agreement and this Resolution.

Section 4. Authorization for Fund Expenditure The Town Mayor is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

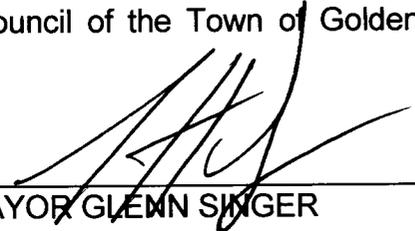
Section 5. Effective Date. That this Resolution shall be effective immediately upon approval of the Town Council.

Sponsored by Town Administration.

The Motion to adopt the foregoing Resolution was offered by Councilmember Lusskin, seconded by Councilmember Einstein and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Kenneth Bernstein	<u>Aye</u>
Councilmember Bernard Einstein	<u>Aye</u>
Councilmember Judy Lusskin	<u>Aye</u>
Councilmember Amy Isackson-Rojas	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida, this 22nd day of March, 2011.



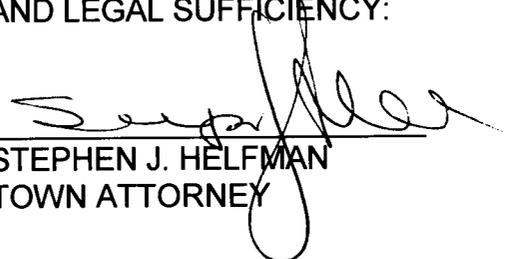
MAYOR GLENN SINGER

ATTEST:



LISSETTE PEREZ,
INTERIM TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



STEPHEN J. HELFMAN
TOWN ATTORNEY

Exhibit "A"
Agreement

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

Project #: 7776768
Authority: OMN03134A
AT&T Contact: Jose A. Suarez
Telephone: 305 887 9476

Customer Name: Town of Golden Beach
Customer Number: 305 932 0744
Work Site Address: Town of Golden Beach

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

1. **Tariffs.** This Agreement is subject to and controlled by the provisions of AT&T's tariffs, including but not limited to Section A5 of the General Subscriber Services Tariff and Section B5 of the Private Line Services Tariff and all such revisions to said tariffs as may be made from time to time.
2. **Special Construction Work & Consideration.** This Agreement is for the Special Construction Work described on *Exhibit I*, attached hereto and incorporated herein by this reference ("Special Construction Work"). Exhibit I includes conditions precedent to AT&T commencing the Special Construction Work. As consideration for the Special Construction Work, Customer agrees to pay AT&T for the work on an "actual cost" basis. All costs are to be computed using the Uniform System of Accounts for Class A telephone companies and include allocated costs for engineering, labor, materials, transportation, motor vehicles, tool and supply expenses, contractor and supplier billings for work and materials related to the job, corporate overhead and loadings and cost of money. 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 **\$174,516.54** ("Estimated Special Construction Work Charges"). **\$12,000.00** of which Customer has previously paid to AT&T, such that **\$162,516.54** 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 therefore (in the event actual exceeds estimated) or refunded to the Customer by AT&T (in the event actual is less than estimated).

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3. **Cost Estimate.** The Estimated Special Construction Work Charges amount is valid for 180 days from 12/15/2010. 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.
4. **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 materially 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.
5. **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.
6. **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 Town 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 Town any such portion of such prior payment that is in excess of 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 Town shall be responsible to pay any such excess amount within 30 days following receipt of an invoice from AT&T.
7. **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.

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8. **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 Town shall have no claim or remedy against AT&T, except a claim to collect any excess payment amount, as set forth in Section 6. In the event of any claims arising from this Agreement, neither party shall be 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.
9. **Limitation of Liability.** AT&T's maximum liability arising in, out of or in any way connected to this Agreement shall be as set forth in the tariffs and in no event shall exceed Special Construction Work Charges paid by Customer to AT&T.
10. **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.
11. **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
12. **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.
13. **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.
14. **Headings.** The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
15. **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.
16. **Interpretation.** The parties agree that this Agreement shall not be interpreted in favor of 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.
17. **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.

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18. **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.
19. **Authority.** The signatories to this Agreement represent and warrant that they are duly authorized to execute this Agreement.
20. **Indemnification and Hold Harmless.** 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, to the extent any such claims are caused by the negligent acts or omissions of the Customer, Customer's agents, servants or employees. The Town's liability under this Section shall not exceed \$2,000,000.00 per occurrence.
21. **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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative on the dates set forth below.

Town of Golden Beach, Florida

BellSouth Telecommunications
Inc. d/b/a AT&T Southeast

By: Alexander Diaz
Printed Name

By: Bernie Marcias
Printed Name

By: [Signature]
Authorized Signature

By: [Signature]
Authorized Signature

Title: Town Manager

Title: DIRECTOR CONSTRUCTION & ENGRG

Date: 01/09/11

Date: 12/15/10

EXHIBIT 1
SPECIAL CONSTRUCTION WORK & CONDITIONS PRECEDENT

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 within Phase II of the "Capital Improvement Program" of the Town of Golden Beach, as 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 AT&T poles following cutover, resulting in conversion of the aerial facilities to underground. The work does not include conversion to underground or removal or any facilities, such as poles, owned by parties other than AT&T.

In addition to the 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 condition precedents to AT&T commencing the work and shall be obligations of the Town where specified:

- A. **Conduit.** At no cost to AT&T, the Town shall (1) install the conduit and related support structures designated as "ATT" (collectively, "AT&T Conduit System") on the December 8, 2008 Town of Golden Beach Capital Improvements Program plans prepared by Corzo Castella Carballo Thompson Salman, PA ("Conduit Plans") for project no. 00734-01-006, and (2) transfer ownership to AT&T of the AT&T Conduit System as described below. Upon completion of construction of the Conduit System, the Town shall notify AT&T. AT&T shall promptly thereafter be afforded the opportunity to inspect the AT&T Conduit System and shall notify the Town in writing of any observed deficiencies. Upon correction by the Town or its contractor(s) of all noticed deficiencies, the Town shall notify the AT&T, and the AT&T shall be afforded an opportunity to re-inspect and notify the Town of approval or any further observed deficiencies (in which case the above process shall again apply). After approval, the Town 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 Town shall be the responsible party 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. Transfer of ownership to AT&T shall be memorialized by the Town's delivery to AT&T of a Bill of Sale in the form attached as **Attachment B**.

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- B. Aboveground terminal permits.** At no cost to AT&T, the Town shall grant to AT&T any necessary permits for the installation by AT&T in Town right-of-way of the following, in the locations shown on the Conduit Plans (or such alternate locations as may be necessary in the event of later changes to installation locations due to field conditions or other circumstances): AT&T Pedestal Terminals. If the Town does not grant separate permits, this Agreement shall constitute Town authorization for such installation. Receipt of any necessary permits from the Town or other permitting agencies is a condition precedent to the Special Construction Work.
- C. Service Drops.** At no cost to AT&T, the Town shall have caused the property owners of each and all properties within the Work Area vicinity that will be served from the new buried cable (each, a "Residence") to do the following (or the Town shall do the following): Install one - 1" PVC Schedule 40 conduit from each AT&T network interface device ("NID") on each Residence to the AT&T pullbox, (as show on the Conduit Plans) for the relevant Residence. The Town 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 in B. 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.** The Town shall provide to AT&T copies of executed agreements with the the other joint users of AT&T-owned or AT&T-used utility poles in the Work Area, namely, FP&L and Atlantic Broadband, for the conversion to underground of their aerial facilities in the Work Area. Removal of other companies' aerial attachments on jointly used poles is necessary prior to AT&T's removal of its aerial facilities. The Town 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 City residents about the City's project that is the subject of this Agreement. AT&T Florida may refer such questions or complaints to the City's representative. In the event other conditions arise that are reasonably necessary as conditions to the Special Construction Work, AT&T will inform the Town, and the Town will address the conditions.
- F. Timing, Conditions Precedent.** If the Conditions Precedent are not completed within 1 year after execution of this Agreement, AT&T Florida may terminate this Agreement by notice to the Town anytime thereafter, until the Conditions

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Precedent have been satisfied (and Section 6 of the Agreement to which this Exhibit 1 is attached shall apply). When the Town believes the Conditions Precedent have been satisfied, the Town will notify AT&T in writing, and AT&T shall determine thereafter whether the Conditions Precedent have, in fact, been satisfied. If Florida does not believe that they have been satisfied, AT&T will notify the Town.

Attachment A
Work Area

- PHASE 1 
- PHASE 2 
- PHASE 3 
- ALREADY CONVERTED 

UNDERGROUND CONVERSION
PHASING PLAN

