

AGREEMENT

THIS AGREEMENT “Agreement”, dated this _____ day of _____, 2016, is by and between the **CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, FL, 32802, “City” and **BELLSOUTH TELECOMMUNICATIONS, LLC, d/b/a AT&T Florida**, a Georgia limited liability company whose address is 450 N. Goldenrod, 0124, Orlando, FL 32807, “AT&T”. **ORLANDO SOCCER STADIUM, LLC**, a Florida limited liability company, “OSS”, is a party to this Agreement to the extent identified in the signature line for OSS in this Agreement. All and each of the above parties are a “Party” or collectively the “Parties.”

WHEREAS, in conjunction with construction of a soccer stadium, “Stadium”, the City abandoned Parramore Avenue, between Central Boulevard and Church Street, which portion of Parramore Avenue is referred to as “Parramore” below, by Ordinance dated 2015-2 (“Ordinance”); and

WHEREAS, AT&T owns and operates certain telecommunication facilities (generally, conduit and manholes, and cables and equipment therein) (the “Facilities”), including a conduit system that houses ten copper cables and twelve fiber optic cables, currently located within Parramore; and

WHEREAS, the Ordinance provides that the abandonment of Parramore shall not become effective as to utilities within Parramore until the utilities are relocated from Parramore; and

WHEREAS, to accommodate the abandonment of Parramore and Stadium construction, the Facilities need to be relocated, and the parties have agreed to enter into this Agreement governing phase 1 and phase 2 of the relocation, as described below; and

WHEREAS, the phase 1 of the relocation process is installation of a new conduit system, “Conduit”, to accommodate the relocated AT&T Facilities; and

WHEREAS, City and AT&T have agreed on a design of the Conduit, as described in the plans, “Plans”, shown in **Exhibit “A”**, attached hereto and made a part hereof by reference; and

WHEREAS, to facilitate construction of the Conduit based on conditions encountered in the field, the parties may agree to make adjustments to the Plans in the manner set forth in this Agreement; and

WHEREAS, City has agreed to construct the Conduit at the City’s cost; and

WHEREAS, the phase 2 of the relocation process is installation of replacement facilities by AT&T and/or its contractors within the new Conduit and, thereafter, transfer of communications services from the Facilities to the replacement facilities (a process called “cutover”, which is manual, labor intensive and time consuming, as explained in Attachment 1) and, following cutover, de-activation of the Facilities (referred to below as the “Phase 2 Work”); and

WHEREAS, the City and OSS have entered into or intend to enter into an agreement providing for OSS to construct the Stadium and to purchase from the City the real property on which the Stadium will be located; and

WHEREAS, given the location of the Facilities and their active status, and the potentially disruptive nature of Stadium construction in the vicinity of the Facilities, OSS and the City have agreed on certain restrictions on Stadium construction in the vicinity of the Facilities until deactivation of the Facilities, as further outlined herein; and

WHEREAS, following completion of cutover and de-activation of the Facilities, AT&T may abandon the Facilities in place, and the OSS will take ownership and responsibility for them, such that the City or OSS may remove and or destroy them thereafter in connection with Stadium construction.

WHEREAS, the parties desire to memorialize their Agreement.

NOW, THEREFORE, in consideration of the mutual covenants described herein, the sufficiency of which is acknowledged by the parties hereto, the parties agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement.
2. Construction of Conduit. The City shall construct and install the Conduit at the City’s cost in compliance with the Plans or any Approved Modified Plans (as defined below). AT&T confirms that it has reviewed and approved the Plans and acknowledges that the City will be expending significant funds to construct the Conduit in reliance thereon.
3. Conduit. In coordination with the City and without unreasonably interfering with the Conduit and/or Stadium construction, AT&T is authorized to inspect construction of the Conduit at any time during the term of this Agreement, and the City and AT&T have discussed that AT&T plans to maintain a representative on-site periodically during Conduit construction to observe construction. AT&T will promptly notify City if it determines that any portion of the Conduit construction is not compliant with the Plans.

Upon completion of the construction/installation of the Conduit, City shall provide written notice to AT&T. Prior to provision of such written notice, the City shall have (or shall have caused its contractor) to (a) successfully “proof” the Conduit (meaning to confirm the Conduit’s integrity and that it is free of any obstructions within) and (b) install “muletape” (of minimum tensile strength of 2500 pounds) in the Conduit. Within three business (3) days of said notice, AT&T shall have the right to inspect the Conduit. Within three (3) business days of said notice, AT&T shall either provide written notice to City that it has approved the Conduit, or provide a written explanation as to why the Conduit construction or some part thereof is not in compliance with the terms herein and the Plans (or the Approved Modified Plans, if applicable). The City shall thereafter take any remedial activities to correct any non-compliance identified in such explanation from AT&T. Upon completion of City’s remedial activities, if any, the City will provide written notice to AT&T. The above process shall again apply until AT&T provides written approval of the Conduit installation to the City. For avoidance of any doubt, AT&T shall not be deemed to have accepted the Conduit unless and until AT&T provides written approval as aforesaid. Should the above result in a dispute between the Parties regarding whether the Conduit was constructed in compliance with the Plans, either Party may exercise its rights under Section 16, below. Based upon conditions in the field, should it be determined that modifications to the Plans are necessary, the proposed modifications shall be presented to AT&T for its approval, approval not to be unreasonably withheld, conditioned or delayed. Any modified plans approved by AT&T in writing are “Approved Modified Plans.”

The City has advised that it wishes to expedite the Conduit installation, and AT&T will cooperate in good faith with the City regarding any informational requests from the City relating to installation of the Conduit. Furthermore during construction of the Conduit, AT&T shall make reasonable efforts to respond to questions and provide information, as necessary, to assist the City with completion of the Conduit installation.

4. Conveyance of Easement/Bill of Sale for Conduit.

(a) Within ten (10) days of receipt of AT&T’s approval of the Conduit, the City will provide to AT&T as-built plans, signed and sealed by a registered surveyor, for the Conduit, a fully executed easement (as well as a signed lender consent(s) to the Easement from any mortgagee(s) on the property, in the form in Exhibit B-1) (“Easement”), and Bill of Sale executed by the City, in the form(s) attached hereto as **Exhibit “B-1” and Exhibit “B-2”**, respectively, and made a part hereof by reference; provided that, should the City not be the owner of the Easement area at the time of the grant of the Easement, the City shall cause the owner of the property to provide to AT&T the executed Easement (including any lender consents) at no cost to AT&T. Should the Easement attached as Exhibit B-1 not include a survey and legal description identifying the Easement area as of the Effective Date of this Agreement, the City shall timely procure and provide to AT&T for approval a survey and legal description of the Easement area, which Easement area shall encompass the Conduit, which approval by AT&T shall not be unreasonably withheld, conditioned or delayed. The Easement, when executed, shall

include the approved survey and legal description as **Exhibit "A"**. Should the survey and legal description for the Easement area not be based upon as-built Conduit conditions, within (10) days of AT&T's approval of the Conduit, the City shall locate the Conduit area and stake the surveyed area to confirm the Conduit is within the surveyed area and provide written notice to AT&T of the results; if it is not, the survey and legal description shall be revised accordingly by the City and shall be Exhibit A to the Easement (if not yet granted) or shall be an exhibit to an amendment to the Easement that is promptly thereafter signed by the then-property owner and AT&T (together with any signed lender consent(s)). At no cost to AT&T, OSS agrees to grant the Easement or cause any of its affiliates to grant the Easement (or sign such amendment to the Easement) at the aforesaid time, should OSS or any of its affiliates own all or a portion of the Easement area at the time the Easement is granted or the amendment is required. Notwithstanding the foregoing, the parties agree that the fully executed Easement may be delivered to AT&T prior to the Bill of Sale, but no later than delivery of the Bill of Sale. Upon the later of delivery to AT&T of the Bill of Sale, the as-built plans and the Easement (or above-referenced Easement amendment) including any lender consents (the "Transfer Date"), AT&T will assume ownership and maintenance of the Conduit. Either Party may record the Easement in the Official Records of Orange County, Florida.

(b) As of the date of execution of the Bill of Sale, the City warrants that the City is the owner of full legal and beneficial title to the Conduit, that the Conduit is not encumbered by any liens or encumbrances, and that the City has the good and lawful right to transfer the same to AT&T. The City shall assign to AT&T any warranties from the contractor(s) that installed the Conduit and provide to AT&T with the executed Bill of Sale, a copy of same. The warranties shall, at a minimum, guarantee all materials and workmanship for the Conduit for a period of one (1) year from the date of AT&T's approval of the Conduit and shall replace any portions that fail because of faulty materials or workmanship at no additional cost to AT&T. Should such warranties from the contractor(s) not be available or assignable, the City shall itself warrant same. The City shall provide AT&T with copies of all lien releases associated with Conduit installation upon receipt. Should any liens be placed on the Conduit, the City shall (i) cause such liens to be discharged within thirty (30) days after notice of filing thereof by bonding, payment or otherwise and (ii) be responsible to pay any costs or claims to AT&T that arise due to the liens.

5. Phase 2 of the Relocation.

(a) Following the Transfer Date, AT&T shall undertake the Phase 2 Work.

(b) The estimated timeframe for completion of the Phase 2 Work, "Schedule," is nine (9) months from the Transfer Date. The Schedule for Job#2 and Job#3 of the Phase 2 Work (as such Jobs are identified on **Exhibit "C"**), which Schedule is phrased in terms of estimated number of AT&T technician hours to be worked on each such job per month (with a month being each 30 day period following the Transfer Date) out of the total estimated hours per job, is attached hereto as **Exhibit "D,"** and made a part hereof by reference. Job #1 (as such Job is identified on Exhibit C) is complete as of

the date of this Agreement. It is understood that the total estimated hours may fluctuate as the jobs are worked and that, while technician hours are a good proxy for determining the status of and progress on the jobs, there are hours and tasks to complete the jobs that are in addition to estimated technician hours. AT&T shall use commercially reasonable efforts to complete the Phase 2 Work within such nine (9) month timeframe, provided that it is understood and agreed that such timeframe is an estimate and may be extended, and AT&T shall not be responsible for any claims, costs, damages or delays associated with non-completion within such timeframe.

(c) The estimated cost for AT&T to undertake and complete the Phase 2 Work is set forth on **Exhibit “C”** (“Estimated Cost”).

(i) Generally, the City shall pay AT&T for the Estimated Cost of the Phase 2 Work in nine equal installments, as set forth below. It is the intent of the parties that each of the City’s payments is based on AT&T’s completion of approximately an additional one-ninth (1/9) or more of the Phase 2 Work. The parties agree to use technician hours worked as the means of measuring progress of the Phase 2 Work. AT&T has estimated that the total technician hours, “Total Technician Hours,” required for completion of the Phase 2 Work is 5534.55. One-ninth (1/9) of the Total Technician Hours is 614.95. On/about thirty (30) days after the Transfer Date, and on/about every thirty (30) days thereafter, until the Notice of Completion, AT&T shall submit a progress report, “Progress Report”, to the City (to the attention of Frank Usina, Community Venues Project Manager, or any successor to Mr. Usina identified in a prior written notice to AT&T) reporting on the number of technician hours worked on the Phase 2 Work as of the date of the Progress Report. Within thirty (30) days after the Transfer Date or within ten (10) days of the first Progress Report, whichever is later, the City shall make the first payment to AT&T. City shall make each of the remaining eight (8) payments within ten (10) days of the receipt of a Progress Report showing that, as of the date of the Progress Report, the number of technician hours worked (including any worked prior to the date of this Agreement) equals at least 95% the following sum:

Total Technician Hours multiplied by $(X \div 9)$ *X being the number of the installment payment in question (e.g. for the second payment, X would be 2, for the third payment, X would be 3, on so on). Should a Progress Report not meet the above criteria, the City shall make the next payment within ten (10) days of receipt of a Progress Report that does meet the criteria. Each payment shall be made by submittal of a check (or wire transfer, if agreed by the City and AT&T) to AT&T in immediately available funds in the amount of \$374,984, which is one-ninth (1/9) of the total Estimated Cost, at the following address, which check identifies the following Job and CFAS numbers: Address: AT&T CWO Coordinator, Attn: Susan Rinehart, 1876 Data Drive, 5th Floor, North, Hoover, AL 35244; CFAS # A004NHK, **Job #53n00329n** and shall deliver a copy of each such check to AT&T at the address set forth in the Notice section below. If the City does not comply with the foregoing payment terms, AT&T may suspend the Phase 2 Work pending receipt of any payment due from the City but not yet received by AT&T per the foregoing payment terms.

(ii) Within ninety(90) days following the Notice of Completion of the Phase 2 Work, AT&T will calculate the actual cost incurred by AT&T for the Phase 2 Work (“Actual Cost”) and submit the calculation of Actual Cost, along with supporting documentation, to the City . AT&T’s supporting documentation of Actual Cost shall include written evidence that provides reasonable detail of the costs

incurred by AT&T to complete the Phase 2 Work. Such supporting documentation shall include (A) a written summary showing internal labor costs based on type of personnel, hours worked and amounts billed to the Phase 2 Work for those hours (based upon internal labor rates, which may fluctuate over the course of the work, are different for different personnel and include wage amounts as well as related amounts, such as labor overhead loadings), (B) copies of invoices or reports evidencing such invoices for materials specifically purchased for the Phase 2 Work and for work performed by vendors parties for the Phase 2 Work (for example, maintenance of traffic and security), and (C) written certifications of cost allocation for those materials not specifically purchased for the Phase 2 Work. Records of Actual Costs shall be maintained by AT&T and made available to City for a period of three (3) years following completion of the Phase 2 Work as per the last sentence in (iii) below. Subject to (iii) below, if the Actual Cost is less than the amounts previously paid to AT&T by the City for the Phase 2 Work, AT&T shall reimburse to the City the difference within forty five (45) days of such submission of Actual Cost., Subject to (iii) below, if the Actual Cost exceeds the Estimated Cost (or the portion of the Estimated Cost previously paid by the City to AT&T, if less than the Estimated Cost), then the City shall pay to AT&T within forty-five (45) days after receipt of the Actual Cost calculation and supporting documentation, as referenced above, , the difference between Actual Cost and Estimated Cost (or the portion of the Estimated Cost previously paid by the City to AT&T, if less than the Estimated Cost), provided that the City shall not be required to pay any amounts that exceed 120% of the Estimated Cost, unless the increase results from an extraordinary circumstance(s) (defined as unusual and unforeseen circumstances) in which case the City shall be responsible to pay Actual Cost amounts in excess of such 120% to the extent attributable to the extraordinary circumstance(s).

(iii) Should the City question or dispute the calculation of Actual Cost, it shall provide written notice to AT&T within twenty (20) days of receipt of the Actual Cost calculation, including the supporting documentation as described above, (“City Notice Regarding Actual Cost”) detailing the nature and extent of the question or dispute, including the total sum that is the subject of the question or dispute. The dispute may, at either Party’s option, be addressed under Section 16, of this Agreement. Should such written notice be provided, the time periods in subparagraph (ii) above for reimbursement to the City or additional payment to AT&T shall be extended pending the parties discussion about the question or dispute, provided that such reimbursement or additional payment shall be made within such timeframes for any portion of the reconciled amount not in question or dispute by the City and provided further that, should the parties not reach agreement on the sum to be reimbursed to the City or paid by the City, whichever applicable, within ninety (90) days after the City’s receipt of the City Notice Regarding Actual Cost, unless extended by the parties in writing or unless extended until the conclusion of any time period set forth in Section 16, if the Parties are addressing the dispute under Section 16, then AT&T or the City shall reimburse or pay, whichever applicable, according to the original Actual Cost calculation from AT&T, which payment shall be made within thirty (30) days after the end of such 90-day period, with the understanding that a disagreement may continue to exist, and that no satisfaction of claims or waiver of claims has occurred such that either Party may pursue resolution thereafter. If the parties are in dispute as to the amount of the Actual Cost or whether an extraordinary circumstance occurred, the provisions of Section 16 may be utilized in addition to applicable legal and equitable

remedies. With reasonable prior written notice, the City shall be entitled to inspect and audit the records supporting the Actual Cost and AT&T shall cooperate with the City in responding to reasonable requests for information supporting the Actual Cost calculation, provided that AT&T may redact any proprietary information or sensitive personal information.

(d) Following completion of the Phase 2 Work, AT&T shall provide written notice to the City ("Notice of Completion"). OSS shall not undertake, and shall cause its affiliates and/or contractors not to undertake, Stadium construction in the vicinity of the Facilities that may damage, or interfere with the operation of the Facilities, until receipt of the Notice of Completion. Without limiting the foregoing, until receipt of the Notice of Completion, OSS shall not undertake, and shall cause its affiliates and/or contractors not to undertake, construction within the footprint of the Facilities or within ten feet on either side of the Facilities ("Restricted Area"), except that construction of **eight (8) footers** for the Stadium may be constructed within the Restricted Area subject to the following (and that additional construction may occur within the Restricted Area only following a written request therefor to AT&T describing the nature of construction, and prior written approval from AT&T, which may be withheld in AT&T's sole discretion): (A) OSS shall provide written notice to AT&T at least 48 hours prior to any construction-related activity within the Restricted Area, identifying the nature and of and planned time for the work, and AT&T may choose to inspect the work on-site when it occurs, which shall be after such 48-hour period (such written notice may be by e-mail and shall be directed to the AT&T representatives identified by AT&T), (B) any excavation or digging within two (2) feet of the Facilities shall be performed only by hand digging, and (C) OSS shall protect the Facilities by shoring (**as defined below**) every four (4) to eight (8) feet for the length of any construction-related activity within, and before the construction-related activity is performed within, the Restricted Area. "Shoring" shall mean undertaking the following to ensure that the stability of the Facilities is not undermined, and that the Facilities are not damaged, due to construction activity: placing plywood boards, steel sheeting or other similar material extending from the bottom of the excavated hole to a height that is at the level of the top of the conduit in which the existing Facilities are located in order to establish a protective wall between the construction activity and the Facilities, which wall is further reinforced with diagonally placed plywood boards or similar material if necessary to reinforce it; should AT&T inspect shoring installed and determine it does not meet the above requirements, AT&T shall notify OSS, and OSS shall, and shall cause its affiliates or contractors to, undertake supplemental shoring identified in AT&T's notice and suspend the construction-related activity in the area until the supplemental shoring has been installed. For avoidance of any doubt, should damage to the Facilities occur during Stadium construction, subparagraph (e) below regarding indemnification shall apply, and OSS complying with the conditions above shall not insulate OSS from responsibility for such damage or otherwise affect the application of subparagraph (e) below or any other terms herein regarding such responsibility. Prior to receipt of the Notice of Completion, the City and/or OSS will not take any action to interfere with AT&T's access to the manholes that are part of the Facilities. Subject to the issuance of applicable permits, the City will facilitate AT&T's access to any manholes located in City right-of-way to which access is required for the Phase 2 Work, and the parties understand that delays in AT&T's ability to access such manholes arising from right-of-way conditions imposed by the City may delay the work.

OSS shall, and shall cause its affiliates and/or contractors to, comply with any terms in the Easement governing and/or restricting permitted activities within the Easement area. In the event of default by OSS or the City of the terms in this subparagraph (d) or any other terms in this Agreement, including without limitation non-provision by OSS of insurance certificates as provided in subparagraph (e) below, AT&T may suspend the Phase 2 Work pending cure of the default. Should damage occur to the Facilities or the new facilities in the Conduit, (A) AT&T shall have the right to undertake necessary repair activity on-site and (B) OSS shall, and shall cause its affiliates and/or contractors to, immediately upon receipt notice from AT&T, cease any construction in the vicinity of the damaged facilities that interferes with AT&T's repair activity pending completion of that activity (as specified in the written notice from AT&T). It is understood and that damage to the Facilities (and any necessary repair work thereof) would slow the progress of the Phase 2 Work, as personnel would be diverted to the repair work instead of Phase 2 Work. A Party shall be entitled to seek injunctive relief to enforce the terms herein. Should the City or its contractors engage in any construction activity, the above terms shall apply to the City as well.

(e) OSS shall indemnify, defend, and hold harmless AT&T from and against any costs, claims, damages, liabilities or judgments arising from breach of this Agreement by OSS or its employees, agents, or contractors or anyone working through or under those contractors ("OSS Parties") or from damage to, disruption to, or interference with the Facilities (or the new facilities in the Conduit) or access to the Facilities (or the new facilities in the Conduit) caused by any OSS Parties. Such indemnification obligation is limited to five (5) million dollars per claim or per occurrence. Without limiting the foregoing relating to indemnification, during Stadium construction, OSS shall maintain and shall cause any of its contractors working on Stadium construction to maintain a general liability insurance for claims of bodily injury and property damage, including loss of use thereof, in the amount of five (5) million dollars (\$5,000,000) to cover any and all costs, claims, damages, liabilities or judgments to the extent that same may arise from breach this Agreement by any OSS Parties or damage to, disruption to, or interference with the Facilities (or the new facilities in the Conduit) or access to the Facilities (or the new Facilities in the Conduit) caused by any OSS Parties and ii) workers' compensation meeting statutory requirements and employer's liability with limits of at least \$1 million, with a waiver of subrogation against AT&T. AT&T shall be listed as an additional insured on the liability policies, and OSS shall provide proof of the insurance coverage described herein to AT&T within three (3) days of the Effective Date of this Agreement. Such coverage shall be on an occurrence basis and with carriers rated at least A-VII by AM Best. Required insurance will be primary to any carried by AT&T.

(f) Following the City's receipt of the Notice of Completion, OSS shall take full ownership and responsibility for the Facilities abandoned by AT&T and may immediately demolish the Facilities.

6. Remedies. Any and all remedies identified in this Agreement are cumulative and not exclusive and shall be in addition to any other remedy which the Parties may have.

7. No Waiver of Regulatory Authority. Nothing in this Agreement constitutes a waiver of the City's regulatory authority.

8. Termination. This Agreement may be terminated by mutual consent of the parties hereto, or upon default (subject to notice and cure time periods set forth in Section 9 below) .

9. Defaults. Failure by any party to this Agreement to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them, respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within thirty (30) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such thirty (30) day period, the defaulting party fails to commence to cure or remedy the default within such thirty (30) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement or seek specific performance of this Agreement. Should this Agreement be terminated early, AT&T shall be entitled to payment for the work completed on the Phase 2 Work as of the date of termination (plus any additional work necessary to ensure that AT&T's facilities can remain operational); in such case, AT&T may invoice the City, and the City will pay, as set forth in Section 5(c))(ii) and (iii).

10. Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party shall be entitled to its attorneys' fees, experts' fees and costs, in addition to any other relief granted as a result of such litigation, provided that this Section shall not apply to any lawsuits relating to the subject matter set forth in Section 23.

11. Amendment. This Agreement may not be terminated, modified or amended except by an instrument in writing signed by each of the parties.

12. Taxes/Fees. AT&T shall be responsible for the payment of all taxes or fees which are associated with AT&T's use of the Easement. AT&T shall not be responsible for payment of any real property taxes on the City's or OSS' (or any of its affiliates) interest in the Easement Area.

13. Controlling Laws:

a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. The location for settlement of any and all claims, controversies and disputes arising out of or relating to any part of this Agreement, or any breach hereof, shall be any applicable state court or federal court in Orange County, Florida, having jurisdiction over the parties and subject matter.

b. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the subject matter of this Agreement.

14. Miscellaneous. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

15. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement. Each Party agrees that this Agreement was entered into voluntarily and without any duress or undue influence.

16. Disputes. Prior to the institution of any judicial proceedings, the Parties agree to attempt to settle any dispute through the procedure set forth below, if invoked by any Party. Unless otherwise specifically stated herein, a Party shall refrain from exercising remedies due to an uncured default by another Party until the end of the time periods set forth below to permit the Parties to attempt to resolve any disputes per the procedure herein.

(a) The Party believing a dispute to exist will give the other party or parties that are the subject of the dispute written notice thereof, setting forth in reasonable detail the facts alleged to give rise to such dispute, the relevant contractual provisions, the nature of any claimed default or breach and a statement of the manner in which such Party believes the dispute should be resolved.

(b) Within twenty (20) days after receipt of such notice, the Party against whom relief is sought in connection with such dispute will deliver a written response, setting forth in reasonable detail its view of the facts alleged to give rise to such dispute, the relevant contractual provisions, the nature of the claimed default or breach and a statement of the manner in which such Party believes the dispute should be resolved.

(c) If the Parties do not agree on the manner in which the dispute should be resolved, they will arrange to hold a meeting within twenty (20) days after delivery of the response. Each Party that is relevant to the subject dispute will have in attendance at such meeting (or available by telephone) a representative with authority to bind the represented Party to any agreement resolving the dispute. At

the meeting (and any adjournments thereof), the Parties will negotiate in good faith in an attempt to agree as to whether a dispute exists, the exact nature of the dispute and the manner in which the dispute should be resolved. If deemed appropriate by any Party, a professional mediator may be engaged to assist in resolving the dispute with mediation costs borne equally by the participating Parties. Any resolution of the dispute will be evidenced by a written agreement setting forth in reasonable detail the actions to be taken by each Party. If no such written agreement is reached within 30 days after the first meeting, the Parties may pursue any legal remedies available to them with respect to such dispute.

(d) Notwithstanding the provisions of this Article, nothing herein shall prevent or hinder any Party from pursuing and obtaining injunctive relief in a court of law as to matters appropriate for such relief.

17. Time/Time is of the Essence. In computing any period of time pursuant to this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. Time is of the essence.

18. Damages. Neither City nor AT&T nor OSS or their affiliates, contractors, subcontractors, agents, elected or appointed officials, and/or employees shall be liable for any special, indirect, punitive, exemplary, incidental or consequential loss or damages of any nature howsoever caused; and whether based on contract, tort (including negligence), indemnity, strict liability or any other theory of the law; provided that the foregoing shall not impact a Party's recovery of loss of use damages, including if available from insurance coverage required under this Agreement.

19. Sovereign Immunity. Nothing herein is intended as a waiver of the City's grant of sovereign immunity, subject to section 768.28, Florida Statutes, or an extension of the waiver of sovereign liability beyond that provided therein. Nothing in this Agreement shall inure to the benefit of any third party for any purpose, including but not limited to, anything which might allow claims otherwise barred by sovereign immunity or operation of law.

20. Force Majeure. The Parties shall use reasonable diligence to ultimately accomplish the purposes of this Agreement, but shall not be liable to each other, or their successors or assigns, for damages, for breach of contract or otherwise, for failure, suspension, diminution, or other variations of services occasioned for a delay or occasioned by a cause or causes beyond the control of the Party whose performance is so delayed. Such causes shall include, without limitation: moratoria; severe adverse weather conditions (such as tropical storms, tornados or hurricanes); war-like operations; terrorism; governmental or judicial action/inaction; legislation, or controls (including permitting or approval delays beyond the dates set forth in the estimated schedule); acts of other government agencies

(regulatory entities or courts) in their sovereign or contractual capacity; fires; floods; epidemics; quarantines; restrictions; strikes or failure or breakdown of transmission or other facilities; material shortages; delays, in securing releases from customers for cutover of their services; or acts of God.

21. Effective Date. This Agreement shall become effective on the date of full and complete execution by all parties hereto.

22. Notice. Any notice required or permitted to be made under this Agreement shall be in writing and shall be effective when actually delivered in person or three days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the following address or such other address as either party may designate by written notice to the other:

To the City:

City of Orlando
City Attorney's Office
400 S. Orange Avenue
Orlando, FL 32802

To AT&T:

BellSouth Telecommunications, LLC
d/b/a AT&T Florida
ATTN: Area Manager
450 N. Goldenrod
Room: 0124
Orlando, FL 32807

With a copy to:

AT&T Legal
Attn: Tech Ops Attorney, Florida
208 S. Akard Street, 29th Floor
Dallas, TX 75202

To OSS:

Orlando Soccer Stadium
618 E. South Street
Orlando, FL 32801

23. Payment/Reservation of Rights. The City's payment to AT&T under this Agreement does not constitute a satisfaction of claims or a waiver of claims and the City reserves whatever rights it may have under applicable law, if any, to seek repayment from AT&T of any monies paid by the City to AT&T under this Agreement. AT&T similarly reserves whatever rights and defenses it may have, if any, relative to any such claims or actions by the City.

IN WITNESS WHEREOF, the parties have executed this Agreement in manner and form sufficient to bind them as of the day and year first written above.

ATTEST:

**CITY OF ORLANDO, a municipal
corporation**

Celeste T. Brown, City Clerk

By: _____

Mayor /Pro Tem

APPROVED AS TO FORM AND
LEGALITY for the use and reliance of the
City of Orlando, Florida only.

Chief Assistant City Attorney

_____, 2016

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____, and, Celeste T. Brown, well known to me and known by me to be
Mayor _____ and City Clerk, respectively, of the City of Orlando, Florida, and acknowledged
before me that they executed the foregoing instrument on behalf of the City of Orlando as its true act
and deed, and that they were duly authorized so to do.

WITNESS my hand and official seal this ____ day of _____, 2016.

Notary Public

Print Name: _____

My Commission expires: _____

Signed, sealed and delivered
in the presence of:

**BellSouth Telecommunications, LLC, d/b/a
AT&T Florida**, a Georgia limited liability
company

Print Name: _____

Signature: _____

Title: _____

Date: _____

Print Name: _____

CORPORATE ACKNOWLEDGMENT

**STATE OF FLORIDA
COUNTY OF ORANGE**

PERSONALLY APPEARED before me, the undersigned authority, _____, as
_____, of **BellSouth Telecommunications, LLC**, a GA limited liability company.
He/she ☐ is personally known to me or ☐ who has produced
_____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2016.

Notary Public

Print Name: _____

My commission expires: _____

Signatures Continue Next Page

OSS signs this Agreement below to agree to the terms of this Agreement, and so that it is a party to this Agreement where terms refers to OSS and/or are related to Stadium construction and to and for the miscellaneous and general contractual terms in Section 6 through the end of the Agreement.

Signed, sealed and delivered
in the presence of:

**Orlando Soccer Stadium, LLC, a Florida
limited liability company**

Signature: _____

Title: _____

Print Name: _____

Date: _____

Print Name: _____

CORPORATE ACKNOWLEDGMENT

**STATE OF FLORIDA
COUNTY OF ORANGE**

PERSONALLY APPEARED before me, the undersigned authority, _____, as
_____, of Orlando Soccer Stadium, LLC. He/she ☐ is personally known to me or ☐
who has produced _____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2016.

Notary Public

Print Name: _____

My commission expires:

ATTACHMENT 1
2/12/2015 Letter from AT&T to City

DRAFT

EXHIBIT “A”
Conduit Plans

DRAFT

EXHIBIT “B-1”
Easement and Lender Consent

DRAFT

EXHIBIT “B-2”
Bill of Sale

DRAFT

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS: that **City of Orlando, Florida** ("City"), for and in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, transfers, grants, bargains and delivers unto **BellSouth Telecommunications, LLC d/b/a AT&T Florida** ("AT&T") all of AT&T's right, title and interest in that certain conduit system more particularly described in Attachment "A".

TO HAVE AND TO HOLD the same unto AT&T, its successors and assigns, forever.

IN WITNESS WHEREOF, City has executed this instrument this ____ day of _____, 201__.

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of State of Florida

By: _____
Celeste T. Brown, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ____ day of _____, 2016 by _____, Mayor Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____, 2016

Attachment A to Bill of Sale
(attach as-built plans of Conduit)

DRAFT

EXHIBIT C
Estimated Cost

DRAFT