# CORPORATE REAL ESTATE SERVICES

Location Project No.

BOA9900469

by, AT & T

Railroad Invoice

0210168

RFW

219629

Date:

October 13, 1999

To:

Phillip Martin

**Records Center** 

From:

Tom Wilson, SR/WA >✓

Subject:

Underground Line Wire Occupation of Railroad Land

Attached are papers related to new Underground Utility easement agreement between AT & T and Grand Trunk Western Railroad, Incorporated, 2800 Livernois, Suite 300, Troy, Michigan 48007-5025. The Underground Utility Easement agreement was primarily acquired to allow Detroit Edison required rights to install electrical facilities needed to serve an AT & T cell site located on Grand Trunk land. This occupation is west of Adams Road, north of Putney and south of Big Beaver in the railroads Mile Post 18.67, Holly Subdivision, in the replat of the Birmingham Forest Hills Subdivision, in the NE ¼ of Section 25, City of Birmingham, Bloomfield Township, Oakland County, Michigan.

The agreement dated August 20, 1999, required a one time total payment of \$10,000.00, paid by AT & T.

Please incorporate copies of the papers related to this new easement agreement into a new railroad Records Center recorded ROW File and tell me what the new file number is.

Attachments

cc:

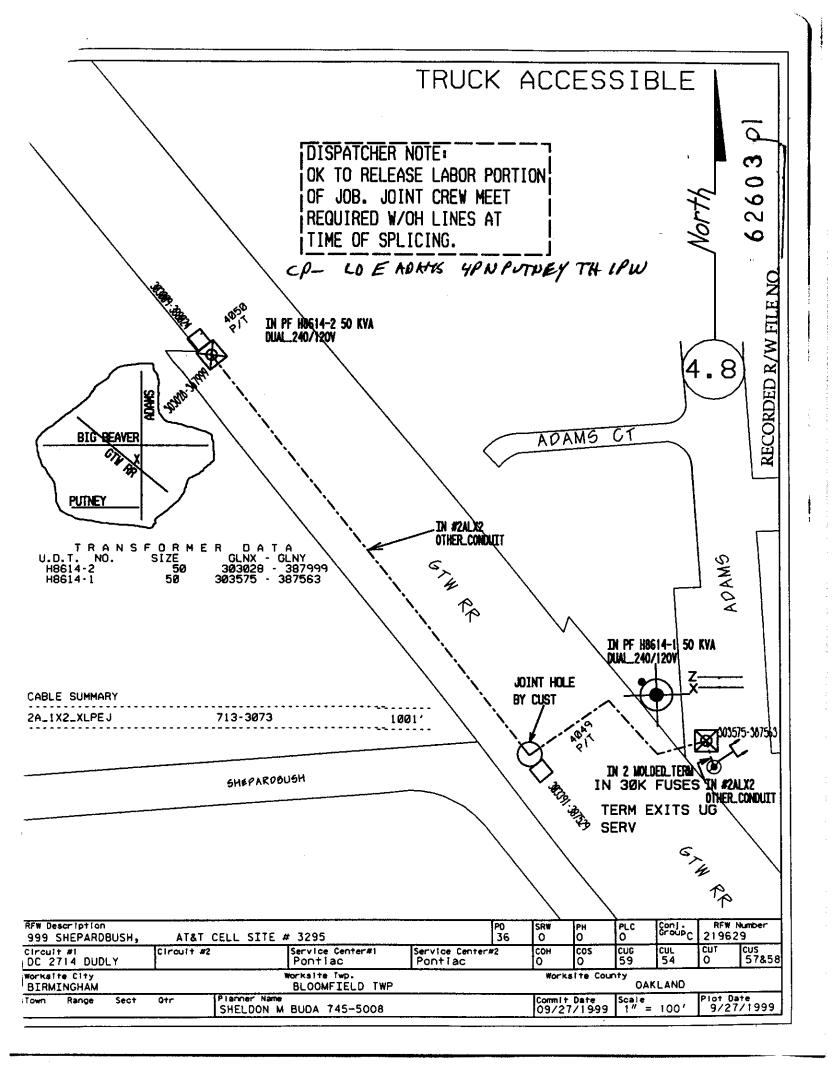
Sheldon Buda (Pontiac SC)

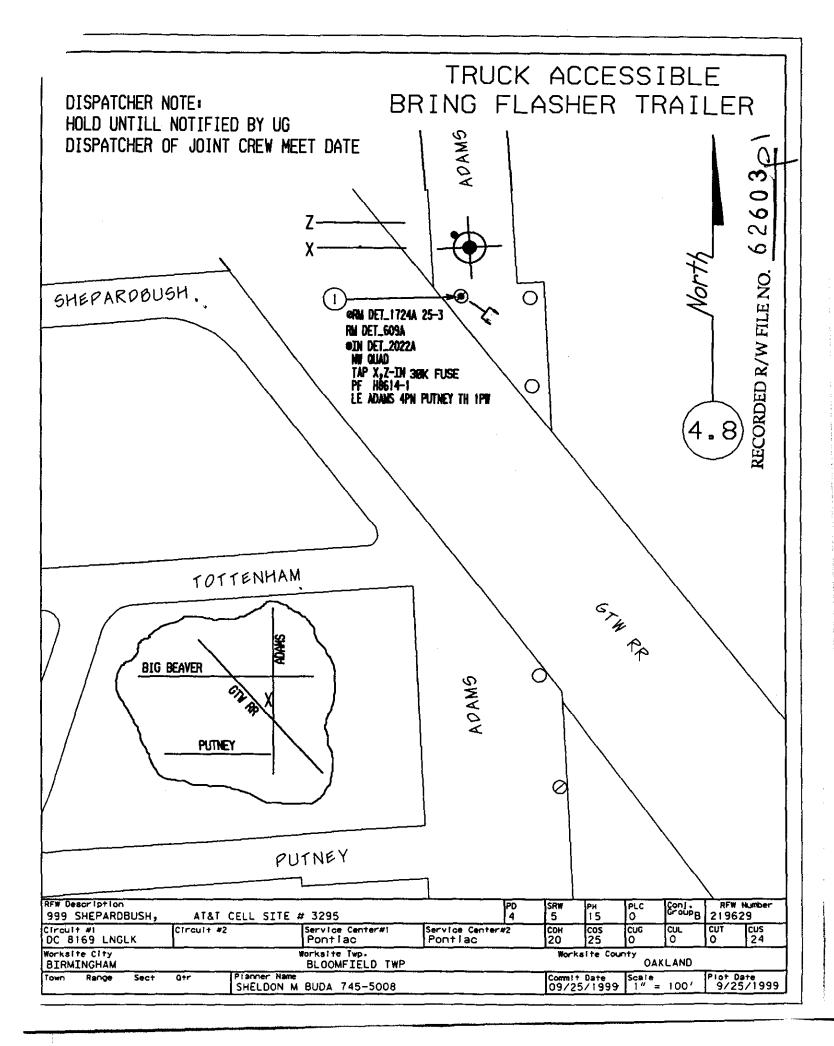
# Corporate Real Estate Services Railroad Encroachment Application



DE 963-6064 2-97

Railroad Name						Department Order						
GRAND TRI	TUK Y U	UESTERA	/			RFW	2196	29				
			o. 2 <del>9 @</del> c-	- O c. 5	<u> </u>	Encroachment (Le	<u></u>					
ow No. (Information on existing rights of valiable from Record Centar)	Field Cul	Town(s) Range(s	)	County(s)		1/4 Section(s)		Section(				
DISCINE	IOE	DAKL	two _	25			NEYY					
ocation Description of Encroachment $S$ , $OFB$	6 BEAUX	ER WE	37 0	F KON	10							
heck appropriate box Cross	es tracks within the					tinally on or ed land,		Provides ser				
□ public	road right-of-way		railroad land	iled on attach		ad land,	∐ tı	o the railroa	<u>d</u>			
ature of required tree rights		racinty Da	(8130 0818	illed Oil attach	on or swill fit				<del>-</del>			
sisting State Permit No.	Date			Railmad Mile Pr	net (Number)		Distance to (	`manina tuom b	Allo Doet fin for	nel)		
	33.5		Railroad Mile Post (Number) Distance				a to Crossing from Mile Post (in feet) F					
pe of Structure		Proposed										
Wood		☐ Steel	Type of Structure Wood			☐ Steel						
Conductors		Poles	Cross- Arms		Conductor			Poles		Cros Am		
Spen. No./Size Kind	Voltage Loc.	Height Class	Size	Span.	No./Size	Kind Volta	ge Loc.	Height	Class	Siz		
	+ +			<u> </u>								
<del>·                                     </del>		<u> </u>										
				$\vdash$	<del></del>							
					+		<del>- </del>					
planation of Line Changes (continue on	separate sheet if necessa	y)				·	······································		•			
		· · · · · · · · · · · · · · · · · · ·										
77111 16	12/	Come	- =	-A L3	- 17-		77	~	~ <i>(</i> )			
INC /S	<i>V 6 0</i>	EJCUI CE	_ / 2	AL A	67	- CC	071					
THIS IS DECO TOWN	ER 44	050	<u> N</u> c	or K	7 1	TUY C	10551	16				
FED FRAY	POLE	ON ADA	<del>177</del> 5	RO.								
	rances											
Tolerance					Clearances From Top of Rail to Final Sag					Height		
Nearest 0.1 foot with lowest conductor or wire at 60° final sag. (If different indicate on drawing)					From Detroit Edison wire to							
					Railroad Communication or Signat Lines							
Materials and clearances sha ue to field conditions actual di			troit Edison's	Overhead Line	es Constructi	ion Standards M	anual at Rail	road Crossi	ings.			
esigned By		Date		Checked By				Da	te	·		
SHELDON BUDA 10-7-99					United by United by							
Company Location	C.O.P.A	Phone No.	Sac P									
MUNISPAUL	N Copy — Railroad Pi	248-475-	July	<u> </u>								





بن. نز

### EASEMENT

## CN PIN No. 4770109 File No. L-21-168

Grand Trunk Western Railroad Incorporated (the "Railroad") a Delaware corporation, with offices at 2800 Livernois, Troy, Michigan 48007-5025, and AT&T Wireless PCS, Inc., by and through its agent AT&T Wireless Services, Inc., d/b/a AT&T Wireless Services ("the Grantee"), with offices at 26877 Northwestern Highway, Suite 350, Southfield, Michigan 48043, enter into the following agreement:

WHEREAS, the Grantee desires to plan, install, construct, use, maintain, inspect, repair, renew and remove, as the case may be underground public utilities ("the Facility") along the route and parcels of land hereinafter described; and

WHEREAS, the Railroad is willing to grant to the Grantee a non-exclusive easement for the Facility on, along, and underneath the Railroad's right-of-way and property north of Adams Road at such location hereinafter described at

Railroad Mile Post 18.67, Holly Subdivision, City of Birmingham, Oakland County, and State of Michigan.

NOW, THEREFORE, in consideration of the sum of

Railroad grants to the Grantee, its successors and assigns, a perpetual non-exclusive easement for the sole purpose of installing, constructing, using, maintaining, inspecting, repairing, renewing or removing, as the case may be, the Facility on, along, and underneath the Railroad's right-of-way and premises described as follows:

Part of the Northeast % of Section 25, Town 2 North, Range 10 East, City of Birmingham, Oakland County, Michigan, the centerline of which is described as: Commencing at the SE corner of Lot 2 replat of Birmingham Forest Hills as recorded in Liber 49, Page 25, Oakland County Records; Thence N66°43'31"E, 14.54 feet to the Westerly Right-Of-Way line of G.T.W. Railroad; Thence North 86°43'31" East 177.03 feet to the Easterly Right-Of-Way line G.T.W. Railroad; Thence South 37°37'32" East 37.10 feet along said Right-Of-Way line to the Place of Beginning of this centerline description; Thence West 31.57 feet; Thence North 37°37'32" West 70.07 Feet; Thence South 52°22'28" West 91.16 feet; Thence North 37°32'24" West 661.38 feet to the Place of Beginning of this centerline description.

The foregoing easement is granted on the following terms and conditions:

1. Prior to any installation being undertaken, the Grantee shall furnish the Railroad the plans and details of the proposed construction which shall be subject to the acceptance and written approval of the Railroad's District Engineer. The Facility shall be at a minimum depth of 5 feet 6 inches

below the base of rail and 4' below bottom of any ditches or drainage culverts.

- 2. All the planning, installing, construction, maintenance, repair, renewal or removal, as the case may be, of the Facility, including the furnishing of all labor, materials, tools and equipment, shall be performed by the Grantee at its sole cost and expense.
- 3. Any planning, installing, construction, maintenance, repair, renewal or removal shall be performed without any damage to the Railroad's property, including, but not by way of limitation, changes to the roadbed or surface, subsidence of its lands, and without any interference with the operation of the Railroad.
- 4. Neither the Grantee nor its contractors shall cross over the Railroad's tracks with any equipment except at public crossings. The Grantee shall not allow any equipment, including crane booms, to work any closer than twenty (20) feet from the nearest rail.
- 5. The Grantee shall give notice to the Railroad's Engineer in Troy, MI at 248.740.6540 or 248.740.6278 not less than seventy-two (72) hours, excluding Saturdays, Sundays and holidays, before beginning any work or making any inspections, repairs, replacements, renewals or removals to the Facility to allow Railroad to assign a flagman; provided, however, that emergency repairs required to preserve life or property may be made with notice less than seventy-two (72) hours. Grantee shall not perform any work

on Railroad property unless a flagman is present or deemed not necessary by Railroad. All inspections, repairs, replacements, renewals or removals of the Facility shall be conducted in such manner as in the sole judgment of the Railroad's District Engineer will in no way interfere with the proper and safe operation, use and enjoyment of the property and railroad of the Railroad or the poles, wires, conduits or other equipment located on the property of the Railroad. Upon completion of the work, Railroad property disturbed during the work shall be restored to the same or as good a condition as it was prior to doing such work.

- 6. During the installation, maintenance, inspection, repair, renewal and removal of the Facility and during any activity involving the easement conveyed, the Grantee, at its own cost and expense, shall reimburse the Railroad for inspection, flagging expenses and any other expenses resulting from the construction, maintenance, repair, replacement, renewal or removal of the Facility, on receipt of bills therefor.
- 7. If the Grantee has any work permitted herein performed by a contractor, the dealings of the contractor shall be handled through the Grantee and not directly with the Railroad; and contracts entered into by and between the Grantee and the contractor relative to said work shall be subject to all the terms and conditions of this easement agreement.

- 8. To the extent permitted by law, the Grantee hereby agrees to indemnify, defend and to hold the Railroad harmless against any and all construction liens, and all other claims, liabilities, damages and expenses asserted against Railroad as a result of, or in any way related to, the Grantee's occupation and use of the easement area and operations conducted thereon by or on behalf of the Grantee pursuant to the easement agreement; provided, however, that the Grantee shall not be responsible for any claims, liabilities or damages resulting solely from the intentional or negligent acts of the Railroad.
- 9. The Grantee acknowledges that installing its Facility on the right-of-way of the Railroad provides some risk that the Facility may be damaged in the course of train operations. Therefore, not withstanding any other language in this easement agreement to the contrary, the Grantee releases the Railroad from any loss, damage and/or claim the Grantee may have against the Railroad resulting from derailments or other accidents of a similar catastrophic nature, from vibration or other activities of the Railroad in the ordinary course of its operations.
- 10. Upon the request of Railroad, the Grantee shall deliver or cause to be delivered to the Railroad a certified copy of an insurance policy or policies naming Grand Trunk Western Railroad Incorporated as additional insured and containing terms acceptable to the Railroad prior to the commencement of any work on Railroad property. Coverage shall be provided with limits of liability in

the amount of Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, death and property damage with an aggregate that the following (\$1,000,000.00) per year to insure the obligations for limit of Six Million Dollars (\$6,000,000.00) per year to insure the obligations for indemnity assumed by the Grantee under the provisions of this agreement. The insurance herein specified shall be with an acceptable insurance company authorized to do business in the state in which the Facility is located and shall be kept in effect until all work required to be performed under the terms of this easement agreement is completed to the satisfaction of the Railroad's District Engineer. The insurance coverage shall contain the following endorsement:

"It is hereby agreed that thirty (30) days' prior written notice of cancellation, expiration, or termination of coverage provided by this policy shall be given to the Grand Trunk Western Railroad Incorporated, Property Management Department, 2800 Livernois, Suite 300, Troy, MI 48083-1222."

If the insurance is canceled, the Grantee shall cease operations as of the date of cancellation, remove all of its equipment and materials from Railroad property and shall not resume operations until a new insurance policy is in force and delivered to the Railroad. It is agreed that the furnishing of the insurance shall not be deemed to be a limitation of the liability of the Grantee, but shall be deemed additional security to the Railroad. The Railroad reserves the right to change the insurance requirements contained herein to reflect changes in laws, claims and accident experiences.

The Grantee may, at its option, self insure the foregoing insurance requirement and if it chooses to do so shall provide the Railroad with a self insurance certificate.

11. The parties agrée to the following environmental indemnification language:

# A. Definitions

B.

- 1: "Hazardous Materials," as used in this article, is as defined in 42 USC 6901 et seq, and any regulations promulgated pursuant thereto.
- 2. "Pollutants," as used in this article, is as defined in 33 USC 1251 et seq, and any regulations promulgated pursuant thereto.
- 3. "Contamination" includes both Hazardous Materials and Pollutants.
- Grantee agrees to indemnify and save harmless the Railroad, its officers and directors, employees and agents (each and all hereinafter "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, and costs and expenses incidental thereto (including cost of defense, settlement, and attorneys' fees), which Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of any governmental or private order, directive, administrative proceeding, rule, regulation, law, statute, ordinance or suit to cease, desist and refrain from all

activities relating to the handling, treatment, storage, removal, extraction and disposal of pollutants or hazardous materials in the water or soil and/or ground water of the Easement area, or as a result of bodily injuries (including death) to any person, damage (including loss of use) to any property (public or private), pollution or contamination of or adverse effects on the environment, or any violation or alleged violation of laws, statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or arising out of any Pollutants or Hazardous Materials in the water or soil or ground water of the Railroad's right-of-way and caused by Grantee's acts or omissions or Grantee's Facility.

12. It is expressly understood and agreed that the easement herein granted shall in no way preclude the full, free and complete use of the right-of-way and property of the Railroad for the installation and maintenance of railroad tracks thereon and the operation of locomotives, trains and cars thereover; and for any other purpose or use by the Railroad that does not interfere with the Grantee's ability to install, operate and maintain the Facility, and that the Railroad shall at all times have the full, free and unobstructed use of the said right-of-way and property.

- 13. If the Grantee abandons this Easement, it shall provide written notice to the Railroad of such abandonment and furnish to the Railroad a recordable release of easement.
- 14. In the event of abandonment or discontinued use of the Facility, the Railroad shall have the right to determine which, if any, of the abandoned Facility may be allowed to remain on the Railroad's premises and under what circumstances or which must be removed from the Railroad's premises. In any event, the Grantee will, at its sole cost and expense, comply with the Railroad's written determination and restore the land to a neat and level condition satisfactory to the Railroad's District Engineer within sixty (60) days following such delivery of written determination.
- 15. If Railroad changes the grade or alignment of its tracks, installs new tracks or makes additions to or modifications to its existing tracks, Railroad shall notify Grantee in writing of such changes, installations, additions, or modifications, as the case may be. Grantee shall, at its sole cost and expense, and within 30 days from the date of such notice or such longer period of time as may be reasonably necessary for Grantee to acquire approval from an appropriate regulatory agency, commence to relocate, strengthen, support, or otherwise protect or modify the Facility and thereafter promptly complete such work, (any such requested action hereinafter referred to as "Modifications"). Where available, and if necessary, Railroad shall provide so

much of its land to Grantee for such Modifications without additional compensation from Grantee. If any governmental agency requires the Grantee to make temporary or permanent Modifications, such Modifications shall be done at no expense to Grantor. All construction in connection with any Modifications shall comply with the terms and condition of this Agreement.

With respect to Modifications, the cost and expense of which is Grantee's responsibility, Railroad agrees that Grantee shall be given an opportunity to seek alternative methods, reasonably acceptable to Railroad, which would eliminate the necessity of relocating the Facilities, or reduce the cost and expense thereof, including but not limited to the acquisition of additional land at Grantee's sole cost and expense, which could accommodate the relocation or improvement of Railroad's operations.

16. The Grantee shall have the right, from time to time and at no additional cost, to cut, trim remove, destroy, or otherwise control any trees and brush that may, in Grantee's opinion, interfere or threaten to interfere with or be hazardous to the Facilities. All trees and brush cut or trimmed by Grantee shall be removed from the premises by Grantee. The method used by Grantee to destroy and control trees and brush shall be approved by the Railroad's District Engineer. Grantee shall not use spraying as a method for tree and brush control.

9

All notices required to be given by this Easement agreement shall 17. be given to the parties as follows or as the parties may otherwise advise in o writing: S

Manager, Asset Management Grantee AT-T wireless Services and ATAT Wireless Real Estate Department Prosecty Marager Services Grand Trunk Western Railroad Inc. AHN: System 2800 Livernois <u>900 5004h</u> Deselooment Troy, MI 48007-5025 Chicago IL 60631 Morthwestern How 18. . The rights herein granted and the terms and conditions hereof ひそ ふらつ 2615 WZ 48034 shall inure to the benefit of and be binding upon the respective successors and AT-T Windess assigns of the parties hereto and are deemed to run with the land. Services ISE MICHAE AVE 19 This Easement Agreement shall be construed, governed and Paramus NJ 07652 Atta: 123 enforced in accordance with the laws of the state in which the Facility is located.

> WHEREOF, Agreement effective this on

GRAND TRUNK WESTERN RAILROAD INCORPORATED, a Delaware corporation

By: Rigley

Its: Manager, Asset Management

AT&T WIRELESS PCS, INC. By and through its agent AT&T Wireless Services, Inc., d/b/a AT&T Wireless Services

STATE OF MICHIGAN ) ss COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me on Aug 201999, by T. J. Rigley, Manager, Asset Management of Grand Trunk Western Railroad Incorporated, a Delaware corporation, on behalf of the said corporation.

Notary Public

My Commission Expires: 9/32/90

STATE OF MICHIGAN ) ss COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me on August 20,1999, by Anthony M Amix, System Den May, of AT&T Wireless PCS, Inc. by and through its agent AT&T Wireless Services, a Michigan corporation, on behalf of said corporation.

Notary Public

My Commission Expires: 9/22/97

Document prepared by: Kevin M. Stanko, Esq. Hopkins & Sutter Suite 220 2800 Livernois Troy, MI 48083-1220

