

UTILITY AGREEMENT

RW 13-5 (REV 6/2010)

DISTRICT 03	COUNTY ED	ROUTE 50	POST MILE 1.06/R2.90	EA 03-1E290
FEDERAL AID NUMBER N/A		OWNER'S FILE NUMBER N/A		
FEDERAL PARTICIPATION				
ON THE PROJECT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		ON THE UTILITIES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
OWNER PAYEE DATA NO.		OR, FORM STD 204 IS ATTACHED:		
<input type="checkbox"/> YES				
UTILITY AGREEMENT NO.	03-UT-2550.3L	DATE	December 18, 2012	

Whereas, pursuant to the Cooperative Agreement No. 03-0459, dated June 6, 2012, between the County of El Dorado and the State of California; El Dorado County Department of Transportation, hereinafter called "COUNTY," acting by and through the State of California Department of Transportation, hereinafter called "STATE," proposes to construct a new interchange with U.S. 50 and Silva Valley Parkway in El Dorado Hills and Pacific Bell Telephone Company, a California corporation, dba AT&T California, hereinafter called "OWNER," owns and maintains communication facilities within the limits of COUNTY's project which requires relocation to accommodate COUNTY's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 2550.3L dated December 18, 2012, OWNER shall relocate their facilities as indicated on relocation plans. All work shall be performed substantially in accordance with OWNER's Plan No. 8776765 dated October 2012 consisting of 7 sheets, a copy of which is on file in the District office of the Department of Transportation at 2850 Fairlane Court, Placerville, CA 95667. Deviations from the OWNER's plan described above initiated by either the COUNTY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the COUNTY and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

The existing facilities described in Section I above will be relocated at 56.4% COUNTY expense and 43.6% OWNER expense in accordance with Sections 5 (a) (b) (c) of the Master Contract dated November 15, 2004.

See "Exhibit A" for the proration.

III. PERFORMANCE OF WORK

OWNER agrees to perform the herein described work with its own forces or to cause the herein-described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

Use of out-of-state personnel (or personnel requiring lodging and meal “per diem” expenses) will not be allowed without prior written authorization by State’s representative. Requests for such authorization must be contained in OWNER’s estimate of actual and necessary relocation costs. Accounting Form FA-1301 is to be completed and submitted for all non-State personnel travel per diem. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per Diem expenses shall not exceed the per diem expense amounts allowed under the State’s Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER’s contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER’s recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by COUNTY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

The OWNER shall submit a final bill to the COUNTY within 360 days after the completion of the work described in Section I above. If the COUNTY has not received a final bill within 360 days after notification of completion of OWNER’s work described in Section I of this Agreement, and COUNTY has delivered to OWNER fully executed Director’s Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER’s facilities, COUNTY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the COUNTY processes a final bill for payment more than 360 days after notification of completion of OWNER’s work, payment of the late bill may be subject to allocation and/or approval by the El Dorado County Board of Supervisors.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the COUNTY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by COUNTY. Except, if the final bill exceeds the OWNER’s estimated costs solely as a result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties of this Agreement prior to the payment of the OWNER’s final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement, shall have the prior concurrence of COUNTY.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. OWNER agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State or Federal audit determines payments to be unallowable, OWNER agrees to reimburse COUNTY upon receipt of COUNTY billing.

UTILITY AGREEMENT NO.
03-UT-2550.3L

It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$66,325.89. COUNTY agrees to advance to OWNER the sum of \$59,693.30 to apply to the cost of the work to be undertaken as provided hereinabove.

When the work is completed, OWNER shall send the COUNTY a Final Bill for reconciliation of the advance. In the event actual and necessary relocation costs as established herein are less than the sum of money advanced by COUNTY to OWNER, OWNER hereby agrees to refund to COUNTY the difference between said actual and necessary cost and the sum of money that was advanced. In the event that the actual and necessary cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, COUNTY will reimburse OWNER said excess costs upon receipt of five (5) copies of an itemized bill as set forth herein.

If COUNTY cancels project before OWNER's actual relocation construction begins, OWNER will reimburse remaining amount minus engineering/overhead/or any amount expended towards the project prior to formal notice of cancellation.

An advanced payment in the amount of \$3,403.40 has been paid by the COUNTY, which is to be credited toward the COUNTY's final expense. See "Exhibit A" for the breakdown of remaining cost to be advanced to OWNER.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of COUNTY's request of March 19, 2010 to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If the project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of all or a portion of Facility Relocation work by the OWNER, the COUNTY shall provide written notice to OWNER, whereby the COUNTY reserves the right to terminate this Agreement by Amendment. Any Amendment shall be based upon mutually acceptable terms and conditions for terminating the Agreement between the Parties.

Notwithstanding any termination or Amendment of this Agreement, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or remedies of any Party under this Agreement executed pursuant hereto, or otherwise available pursuant to applicable law.

OWNER shall submit a Notice of Completion to the COUNTY within 30 days of the completion of the work described herein.

Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on COUNTY highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.

The laws of the State of California shall govern this Agreement. any litigation arising herein shall be brought in the County of El Dorado.

For work performed within COUNTY right of way, COUNTY will issue an encroachment permit at no cost to OWNER.

UTILITY AGREEMENT NO.
03-UT-2550.3L

THE ESTIMATED COST TO COUNTY FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS \$66,325.89. See "Exhibit A" for the breakdown of remaining cost to be advance to OWNER.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

COUNTY: EL DORADO

OWNER: AT&T

By _____
Name _____ Date _____
Title _____

By _____
Name _____ Date _____
Title _____

APPROVAL RECOMMENDED:

By _____
Name Kimberly A. Kerr Date _____
Interim Director
Title Department of Transportation

By _____
Name _____ Date _____
Title _____

EA: 03-1E290
County: El Dorado
Route: 50
Post Mile: 1.06/R2.90
UA #: 03-UT-2550.3L
Page 1 of 1

EXHIBIT A

Cost Liability Breakdown:

\$102,694.92 (cost of area in County R/W under franchise)
+ \$14,904.17 (cost of area in OWNER Easement)
\$117,599.09 Total Cost

In Easement (1015 ft @ 100% County) + in Franchise (2202 ft @ 50% County) + in Freeway (535 ft @ 0% County)

Length in Easement (1015 ft) + Length in Franchise (2202 ft) + Length in Freeway (535 ft)

In Easement (1015 ft @ 100% County) + in Franchise (1101ft @ 50% County) + in Freeway (0 ft)

3752 feet in conflict

2116 ft/3752 ft = 56.4% County Expense, 43.6% Owner Expense

\$117,599.09 x 56.4% County Expense = \$66,325.89

\$66,325.89 x 90% (only 90% shall be advanced per Note under clause IV-4) =
\$59,693.30

County Expense = \$59,693.30 - \$3,403.40 (already paid) =

County still owes Owner **\$56,289.90**