

UTILITY AGREEMENT AMENDMENT NO.
2400.3.1

<u>Dist</u> 03	<u>Co</u> ED	<u>Rte</u> 50	<u>KP (P.M.)</u> 23.8/24.7 (14.7/15.3)	<u>EA</u> 370001
Federal Aid No.:				
Owner's File: Caltrans Utility Agreement No. 2400.3-Amend I				
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				

AMENDMENT I

to

UTILITY AGREEMENT NO. 2400.3

THIS AMENDMENT I to Utility Agreement No. 2400.3 dated 11/17/2006 made and entered into by and between the **County of El Dorado**, a political subdivision of the State of California (hereinafter referred to as "County"), and **AT&T** (previously doing business as Pacific Bell Telephone Company and SBC of California), (hereinafter referred to as "Owner");

RECITALS

WHEREAS, County and Owner have entered into that certain Utility Agreement No. 2400.3 (hereinafter referred to as the "Agreement") for the relocation of Owner's communication underground fiber optic and overhead facilities within the limits of, and necessitated by, construction of the US Highway 50 / Missouri Flat Road Interchange Phase 1A Project #71317 (hereinafter referred to as "Project"), which Agreement is incorporated herein and made by reference a part hereof; and

WHEREAS, during construction of the Project, additional Owner facilities have been discovered which will require relocation beyond the scope anticipated in the Agreement; and

WHEREAS, during construction of the Project, Owner has determined that the actual costs of relocating its facilities will exceed the estimate on which County's share of costs was calculated in the Agreement; and

WHEREAS, County's share of the additional relocation costs will exceed 125% of the original estimated amount indicated in the Agreement; and

WHEREAS, the parties hereto desire to amend Utility Agreement No. 2400.3 to revise the scope of work to include necessary design changes associated with the relocation of Owner's facilities as indicated by Revised Owner's Plan No. 572933 dated August 31, 2007, amending Article I., WORK TO BE DONE; and

WHEREAS, the parties hereto desire to amend Utility Agreement No. 2400.3 to change County's Notices Recipients, amending Section V., GENERAL CONDITIONS; and

WHEREAS, the parties hereto desire to amend Utility Agreement No. 2400.3 to increase the estimated cost to County for its share of the utility relocation work under the Agreement by \$140,050, amending the statement and the table near the bottom of on page four of the Agreement; and

WHEREAS, the parties hereto desire to amend Utility Agreement No. 2400.3 to identify County's Contract Administrator;

NOW, THEREFORE, County and Owner mutually agree to amend the terms of the Agreement in this Amendment I to Utility Agreement No. 2400.3 as follows:

Section I., WORK TO BE DONE, is hereby amended to read as follows:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 2400.3 dated 11-17-2006 and Revised Notice to Owner No. 2400.3.1 dated _____, Owner shall remove and/or abandon, and relocate Owner's telephone facilities. All work shall be performed substantially in accordance with Revised Owner's Plan No. 572933 dated August 31, 2007, consisting of five (5) sheets, a copy of which is on file in the County office of the Department of Transportation at 2850 Fairlane Court, Building "C", 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 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 receipt 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.

Section V., GENERAL CONDITIONS, is hereby amended as follows:

The Notices to County section on page four of the Agreement is amended to read:

Notices to County shall be in duplicate and addressed as follows:

To County:
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Matthew D. Smeltzer,
Acting Deputy Director of Engineering

With a Copy to:
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Adam Bane,
Acting Supervising Civil Engineer

or to such other location as County directs

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The Agreement is further amended a follows:

That portion of the Agreement near the bottom of page 4 regarding the estimated cost to County for its share of the work is hereby amended to read:

THE ESTIMATED COST TO COUNTY FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS \$200,000

FUND TYPE	STATE EA	AMOUNT
Design Funds		\$ 0
Construction Funds		\$ 0
COUNTY R/W Funds	370001	\$ 200,000

The Agreement is further amended to add the following provision:

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, Acting Deputy Director of Engineering, West Slope Engineering Division, Department of Transportation, or successor.

Except as herein amended, all other parts and sections of Utility Agreement No. 2400.3 shall remain unchanged and in full force and effect.

Contract Administrator Concurrence:

By: _____ Dated: _____
Matthew D. Smeltzer
Acting Deputy Director of Engineering
West Slope Engineering Division

Requesting County Department Concurrence:

By: _____ Dated: _____
Richard W. Shepard, P.E.
Director of Transportation

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IN WITNESS WHEREOF, the parties have executed this Amendment I to Utility Agreement No. 2400.3 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- A T & T --

By: _____
Thomas Ainsworth, Area Manager
"Owner"

Dated: _____

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<u>Dist</u>	<u>Co</u>	<u>Rte</u>	<u>KP (P.M.)</u>	<u>EA</u>
03	ED	50	23.8/24.7 (14.7/15.3)	370001

Federal Aid No.:

Owner's File: Caltrans Utility Agreement No. 2400.3

FEDERAL PARTICIPATION: On the Project Yes No

On the Utilities Yes No

UTILITY AGREEMENT NO.: 2400.3 DATE: 11/17/2006

The County of El Dorado acting through a Cooperative Agreement with the State of California Department of Transportation (State), herein called "County," proposes to reconstruct the US Hwy 50/Missouri Flat Road interchange in the County of El Dorado. Work includes reconstructing the interchange ramps, widening Missouri Flat Road from 0.12 km north of Prospector's Plaza Drive to 0.14 km south of Perks Court, and AT&T (previously doing business as Pacific Bell Telephone Company and SBC of California) hereinafter called "Owner," owns and maintains communication underground fiber optic and overhead facilities within the limits of County's project which requires relocation to accommodate County's construction.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 2400.3 dated 11/17/2006, Owner shall remove and/or abandon, and relocate Owner's telephone facilities. All work shall be performed substantially in accordance with Owner's Plan No. 5729333 dated September 27, 2006, consisting of six (6) sheets, a copy of which is on file in the County office of the Department of Transportation at 2850 Fairlane Court, Building "C", 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 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 receipt 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 50% Owner expense and 50% County for the expense of relocating the Owner's facilities that lie within the State's right of way access control that is designated as a freeway (U.S. Route 50) per the Freeway Master Contract dated November 15, 2004 between the State and AT&T (previously doing business as Pacific Bell Telephone Company and SBC of California).

The existing facilities described in Section I above will be relocated at 0% County expense and 100% Owner for the expense of relocating the Owner's facilities that lie within the County's right of way per County Encroachment Permit.

County's liability for Owner's expenses shall be 27% of Owner's overall costs of relocating its facilities.

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.

Upon the issuance of a Notice to Owner, the Owner shall diligently undertake, or cause to be undertaken, the relocation of its utility facilities in accordance with County's Notice to Owner and County's reasonable construction schedule for the US Hwy 50/Missouri Flat Road interchange Project.

Owner shall apply for, obtain, and comply with the State of California, Department of Transportation Encroachment Permit, and shall apply for, obtain, and comply with County's standard Encroachment Permit, to relocate its communication facilities for the US Hwy 50/Missouri Flat Road Interchange Project. County shall waive the Encroachment Permit application fee for its permit.

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. Progress bills that do not in total exceed the amount of this Agreement shall be made by County 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 in accordance with the paragraphs below.

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.

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 (e.g. in the form of Owner's "CWO Bill Support Report"), 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. If the final bill exceeds the Owner's estimated costs solely as the 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 to this agreement prior to the payment of the Owner's final bill. Any increase 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 bill and will be available for audit in accordance with audit principles and standards as set forth in 48 CFR, Chapter 1, Part 31 by STATE and/or Federal auditors.

V. GENERAL CONDITIONS

All costs accrued by Owner as a result of County's request 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 County's project, which precipitated this Agreement, is canceled or modified so as to eliminate the necessity of work by Owner, County will notify Owner in writing and County reserves the right to terminate this Agreement. In the event of said termination, the County and Owner will identify and provide for mutually acceptable terms and conditions for payment of costs incurred prior to termination in accordance with this agreement.

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

It is understood that said highway is a Federal aid highway and accordingly 23 CFR 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the County and the Owner pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645.

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 parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

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This Agreement contains all of the terms of agreement between County and Owner. All modifications or amendments to this Agreement must be in writing and signed by both 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.

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Department of Transportation
2850 Fairlane Court Bld. C
Placerville, CA 95667
Attn.: Richard W. Shepard,
Director of Transportation

With a Copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court Bld. C
Placerville, CA 95667
Attn.: Adam Bane,
Senior Civil Engineer

or to such other location as the County directs.

Notices to Owner shall be addressed as follows:

To AT&T:

AT&T
3675 T Street Rm. 111
Sacramento, CA 95816
Attn.: Cheryl Summers,
AT&T Utility Encroachments

With a Copy to:

AT&T
12824 Earhart Avenue
Auburn, CA 95602
Attn.: Carol Prince,
Public Works Manager

or to such other location as AT&T directs.

THE ESTIMATED COST TO COUNTY FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS \$ 59,950

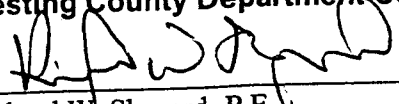
FUND TYPE	STATE EA	AMOUNT
Design Funds		\$ 0
Construction Funds		\$ 0
COUNTY R/W Funds	370001	\$ 59,950

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Requesting County Department Concurrence:

By: 
Richard W. Shepard, P.E.
Director of Transportation

Dated: 11/17/02

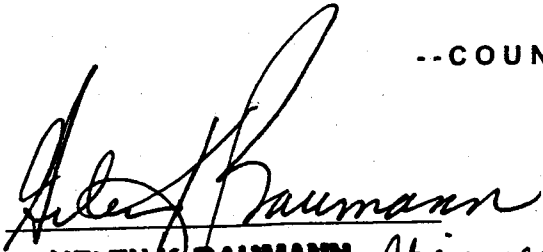
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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: 
HELEN K. BAUMANN, Chairman
Board of Supervisors
"County"

Dated: 1-9-07

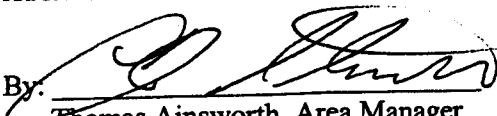
Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 1-9-07

-- UTILITY COMPANY --

AT&T

By: 
Thomas Ainsworth, Area Manager

Dated: 11/27/06