

Dist	Co	Rte	P.M.	EA
03	Nevada	NA	Newtown Rd SR49 3/4mi south	03-929298L
<b>Federal Aid No.:</b> CMLL 5917-070				
<b>Owners File:</b> AT&T				
<b>Federal Participation:</b> On the Project <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No On the Utilities <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
<b>Owner:</b> AT&T				

**UTILITY AGREEMENT NO. 2****DATE:** Sept. 22, 2015

The County of Nevada acting by and through the Department of Public Works, hereinafter called "COUNTY", proposes a project that will address rural road safety enhancements of Newtown Road, by improving shoulder and travel lane widths, providing a Class II/III bike lane, curve realignment and roadway drainage near Nevada City, in Nevada County.

and

Pacific Bell Telephone Company, a California Corporation dba AT&T California (AT&T), hereinafter called "OWNER", lawfully owns and maintains telecommunication facilities within the limits of COUNTY'S project which require adjustment of a portion of those facilities to accommodate COUNTY's project.

It is hereby mutually agreed that:

### I. WORK TO BE DONE:

In accordance with Notice to Owner No. 2, dated September 8, 2015 OWNER shall relocate overhead power facilities (poles and lines) as proposed in relocation service plan sheet 1 thru. 6 as applicable. All work shall be performed substantially in accordance with OWNER's Approved Plan A006MCR dated July, 2015 consisting of six (6) sheets, a copy of which is on file in the Department of Public Works at 950 Maidu Ave, Nevada City, CA 95959. 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 78% COUNTY and 22% OWNER expense in accordance with the following:

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**11 poles are located in their present position pursuant to prescriptive rights prior and superior to those of the COUNTY and will be relocated at COUNTY's expense;**

**3 poles are located within the COUNTY's right of way and will be relocated at OWNER's expense under the provisions of Section (680) of the Streets and Highways Code.**

**COUNTY's liability is calculated as  $11/14 * 100 = 78\%$**

Total COUNTY estimated expense for Relocation: \$78,790.46

**III PERFORMANCE OF WORK:**

The OWNER agrees to perform the herein-described work with its own forces or to cause the herein-described work to be performed by 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.

**IV PAYMENT FOR WORK:**

The COUNTY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission (PUC) or Federal Communications Commission (FCC), whichever is applicable.

It is understood and agreed that the COUNTY will not pay for any betterment or increase in capacity of OWNER'S facilities in the new location and that OWNER shall give credit to the COUNTY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

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 180 days after the completion of the work described in Section I above. If the COUNTY has not received a final bill within 180 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, 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 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 and all increases in costs that are the direct result of deviations from the work described in Section 1 of this Agreement shall have the prior concurrence of the 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, Part 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse COUNTY upon receipt of COUNTY billing.

## **V. GENERAL CONDITIONS**

All costs accrued by OWNER as a result of COUNTY's request of January 15, 2015 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 by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

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 COUNTY road right of way and where OWNER's facilities will remain on or be relocated on COUNTY road right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.

It is understood that said highway is a federal aid highway and accordingly, 23 CFR, Chapter 1; Part 645 is hereby incorporated into this Agreement.

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In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA requirements are further specified in Moving ahead for Progress in the 21<sup>st</sup> Century MAP-21, section 1518; 23 CFR 635.410 requires that all

Manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.

OWNER understands and acknowledges that this project is subject to the requirements of the BA law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance will demonstrate BA compliance by collecting written certification(s) from vendor(s) or by collecting written certification(s) from the manufacturer(s) (the mill test report (MTR)).

All documents obtained to demonstrate BA compliance will be held by the OWNER for a period of three (3) years from the date the final payment was received by the OWNER and will be made available to Caltrans or FHWA upon request.

One set of copies of all documents obtained to demonstrate BA compliance will be attached to, and submitted with, the final invoice.

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

COUNTY OF NEVADA:

OWNER:

By \_\_\_\_\_  
Honorable Edward C. Scofield      Date  
Chair, Board of Supervisors

By \_\_\_\_\_  
Torrey Denoo      Date  
AT&T Area Manager