

City of Los Angeles Harbor  
Department

**UTILITY AGREEMENT**

County	Route	P.M.	Project #
Los Angeles	SR 47	0.3 / 0.8	7150003041
<b>Fed. Aid. No.</b>			
<b>Owner's File</b> EA-318501-3 (A0207TJ)			
<b>FEDERAL PARTICIPATION: On the Project:</b>			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
On the Utilities: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

**UTILITY AGREEMENT NO. EA – 318501 – 3 (A0207TJ)**

The City of Los Angeles Harbor Department hereinafter called "LOCAL AGENCY" proposes to reroute the current southbound SR-47 on- and off-ramps to Knoll Drive and Front Street. Other improvements include roadway improvement in northbound SR-47 on- and off-ramps and local street improvements along Front Street/Harbor Boulevard in the City of Los Angeles, Los Angeles County, California.

AND: AT&T – EA 318501-3 (A0207TJ)

Hereinafter referred to as "OWNER", owns and maintains telecommunication facilities, within the limits of the LOCAL AGENCY Project that requires relocation of said facilities to accommodate LOCAL AGENCY's project.

It is hereby mutually agreed that:

**I. WORK TO BE PERFORMED**

In accordance with Notice to Owner dated November 19, 2020, OWNER shall relocate underground facilities to accommodate the project. All work shall be performed substantially in accordance with OWNER's Plan No. A0207TJ approved dated April 05, 2017, consisting of 11 sheets, a copy of which is on file in the Office of the LOCAL AGENCY at 425 S. Palos Verdes Street, San Pedro, CA 90733.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY 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 LOCAL AGENCY 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. Work described in plans must be completed on or before June 30, 2023.

**II. LIABILITY FOR WORK**

**UTILITY AGREEMENT (Cont.)**

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The existing facilities described in Section I above will be relocated at 50% LOCAL AGENCY expense and 50% OWNER expense in accordance with Section 5C of the Freeway Master Contract dated November 15, 2004.

**III. PERFORMANCE OF WORK**

OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

Use of personnel requiring lodging and meal "per diem" expenses will not be allowed without prior written authorization by LOCAL AGENCY's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. 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 California Department of Human Resources travel expense guidelines.

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; but, work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

**IV. PAYMENT FOR WORK**

The LOCAL AGENCY shall pay its share of the actual and necessary 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 and necessary 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), Federal Energy Regulatory Commission (FERC) or Federal Communications Commission (FCC), whichever is applicable.

It is understood and agreed that the LOCAL AGENCY 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 LOCAL AGENCY for all accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

## UTILITY AGREEMENT (Cont.)

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Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit itemized 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 LOCAL AGENCY 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 LOCAL AGENCY within 180 days after the completion of the work described in Section I above. If the LOCAL AGENCY 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 LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days. 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 LOCAL AGENCY 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 LOCAL AGENCY. 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 OWNERS 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 LOCAL AGENCY.

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 in accordance with Contract Cost Principals and Procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31 by LOCAL AGENCY and/or Federal Auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines

payments to be unallowable, OWNER agrees to reimburse AGENCY upon receipt of AGENCY billing. If OWNER is subject to repayment due to failure by Local Public Agency (LPA) to comply with applicable laws, regulations, and ordinances, then LPA will ensure that OWNER is compensated for actual cost in performing work under this agreement.

**V. GENERAL CONDITIONS**

All costs accrued by OWNER as a result of LOCAL AGENCY's request of November 19, 2020, 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 LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement. The persons signing this agreement have full authority to do so.

All obligations of LOCAL AGENCY under the terms of this Agreement are subject to the acceptance of the Agreement by LOCAL AGENCY Board of Harbor Commissioners or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.

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

Owner understands and acknowledges that this project is subject to the requirements of the Buy America (BA) law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. OWNER hereby certifies that in the performance of this Agreement, for products where BA requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying BA compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the LOCAL AGENCY'S guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013.

LOCAL AGENCY further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by LOCAL AGENCY and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER's actions are in compliance with the Guidance.

**UTILITY AGREEMENT (Cont.)**

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THE ESTIMATED COSTS TO LOCAL AGENCY FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS **\$1,031,993 (One Million, Thirty-One Thousand, Nine Hundred and Ninety-Three Dollars).**

**Signatures on Following Page**

UTILITY AGREEMENT (Cont.)

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SIGNATURE PAGE

TO

UTILITY AGREEMENT NO. EA-318501-3 (A0207TJ)

IN WITNESS WHEREOF, the above parties have executed this Agreement on the dates below.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: \_\_\_\_\_

By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest \_\_\_\_\_  
AMBER M. KLESGES  
Board Secretary

AT&T

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Justin Bowman  
Area Manager OSP

Attest \_\_\_\_\_  
Allen Lee  
Manager OSP Engineer

APPROVED AS TO FORM AND LEGALITY

Dea \_\_\_\_\_, 2022  
MICHAEL N. FEUER, City Attorney  
STEVEN Y. OTERA, General Counsel

By Estelle M. Braaf  
Estelle M. Braaf, Deputy City Attorney

Account#	54220	W.O. #	2533400
Ctr/Div#	1172	Job Fac.#	635-00
Proj/Prog#	000		

BUDGET FY	AMOUNT
FY 23	\$0
FY 24	\$1,031,993
FY 25	\$0
<b>TOTAL</b>	<b>\$1,031,993</b>

For Acct/Budget Div. Use Only

Verified by: [Signature]

Digitally signed by Jerome Adams  
Date: 2022.12.07 11:09:44 -0800

Verified Funds Available: [Signature]

Digitally signed by Frank Lu  
Date: 2022.12.08 11:20:18 -0800

Date Approved: 12/8/22