ATTACHMENT B

Utility Agreement No 10-UT-3818.3

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

DISTRICT 10
COUNTY San Joaquin
ROUTE 5
KILOMETER POST PM 35.5 to 38.0
EA 10-0E4901
FEDERAL AID NO. N/A
OWNER’S FILE NUMBER 6306079
FEDERAL PARTICIPATION
On The Project ☐ Yes ☒ No
On The Utilities ☐ Yes ☒ No

Owner Payee Data No. ___________ or form STD 204 is attached ☐

UTILITY AGREEMENT NO. 04-UT-1818.3 DATE January 14, 2014

The City of Stockton, hereinafter called “CITY,” in cooperation with the California Department of Transportation (“STATE”)

And

Name: AT&T

Address: 2300 E. Eight Mile Road, Stockton, CA 95210

Herein after called “OWNER,” owns and maintains TELEPHONE AND FIBER OPTIC LINES AND VAULTS.

Within the limits of STATE project which requires RELOCATION OF TELEPHONE AND FIBER OPTIC LINES AND VAULTS.

To accommodate STATE project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 10-UT-1818.3 dated January 23, 2012, OWNER shall relocate telephone and fiber optic lines and vaults. All work shall be performed substantially in accordance with OWNER’s Plan No. 6306079 dated December 2011 consisting of six sheets, a copy of which is on file in the District office of the Department of Transportation at 1976 E. Martin Luther King Jr. Blvd, Stockton, CA. Deviations from the OWNER’s plan described above initiated by either the STATE 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 STATE 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.
STATE’s project

The City of Stockton (CITY) in partnership with the California Department of Transportation (STATE), proposes the reconstruction of the Interstate 5 (I-5)/French Camp Road Interchange, extension of Sperry Road from Performance Drive to French Camp Road, and relocation of Manthey Road. The interchange reconstruction would create a Type L-9, partial cloverleaf interchange, including widening of the existing structure to accommodate new loop on-ramps and constructing auxiliary lanes on I-5 from French Camp Road to Downing Avenue. The proposed project would provide route continuity, improved traffic operations, and reduced congestion on local streets between State Route 99 and I-5. Construction is expected to begin in August 2012.

OWNER’s TELEPHONE AND FIBER OPTIC LINES AND VAULTS.

1) Approximately 705 m (2313 ft) of existing 100 mm (4 in) underground telephone service line which begins at the intersection of Yettner Road and South French Camp Road and runs on the west side and parallel to the existing South French Camp Road until reaching the intersection with the existing French Camp Road, then it jogs more toward the west and continues on the south side of the existing French Camp Road until reaching the intersection of French Camp Road and Manthey Road. The relocation of this 100 mm (4 in) underground telephone service line will begin at the intersection of Yettner Road and South French Camp Road and will run on the west side and parallel to the proposed South French Camp Road within a proposed 3.0 m (10 ft) public utility easement until reaching the intersection of French Camp Road and South French Camp Road where the proposed underground electric line will jogs across French Camp Road to the proposed 6.1 m (20 ft) public utility easement which will extend along the north side of French Camp Road and the NB On-Ramp.

2) Approximately 196 m (643 ft) of existing 100 mm (4 in) underground telephone service lines which will be relocated currently run more less from south to north on the west side and parallel to the existing SB Off-Ramp. This segment will have to be relocated further west into a proposed 7.6 m (25 ft) public utility easement which runs along the West side of the proposed SB Off-Ramp. This relocation is needed in order to avoid any physical conflict with the proposed SB Off-Ramp.

3) An existing AT&T Box/MH located in the middle of the proposed intersection of the NB Ramps and the French Camp Road will be relocated in order to avoid impact with the proposed structural section of this intersection.

4) An existing telephone vault located along the existing Frank West Circle near and about the beginning of the proposed Cul-de-Sac will be relocated in order to avoid physical conflict with the proposed improvements.

5) Approximately 222 m (728 ft) of existing 100 mm (4 in) fiber optic conduit lines which will be relocated currently runs more less from south to north underneath the existing Manthey Road, crossing the Existing French camp road and on the west side and parallel to the existing SB Off-Ramp. This segment will have to be relocated further west into a proposed 7.6 m (25 ft) public utility easement which runs along the West side of the proposed SB Off-Ramp. This relocation is needed in order to avoid any physical conflict with the proposed SB Off-Ramp.

6) An existing AT&T fiber optic manhole located on the east side of the existing NB Off-Ramp gore will have to be relocated from its current location.
II. LIABILITY FOR WORK

The existing facilities are located within CITY right of way by franchise agreement and so the liability for the cost of relocations will be 50% CITY and 50% OWNER per Section 5C of the Freeway Master Contract dated November 15, 2004.

Estimated Relocation Costs ......................................$167,376.40
Total Estimated STATE Liability, 0% ..........................$0
Total Estimated OWNER Liability, 50% .....................$83,688.20
Total Estimated CITY Liability, 50% ..........................$83,688.20

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 permission 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 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

The CITY shall pay its share of the actual and necessary cost of the herein described work within 90 days after receipt of five (5) copies of OWNER's itemized bill, 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, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

It is understood and agreed that the CITY 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 CITY for the "used life" or accumulated depreciation of 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 CITY 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 CITY within 360 days after the completion of the work described in Section I above. If the CITY 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 CITY has delivered to OWNER fully executed Director’s Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER’s facilities, CITY 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 CITY 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 California Transportation Commission.

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 CITY 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 CITY. 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 either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission.

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 I of this Agreement, shall have the prior concurrence of CITY.

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 and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of CITY’s request of March 12, 2009 to review, study and/or prepare relocation plans and estimates and perform inspections for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If CITY’s project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, CITY will notify OWNER in writing, and CITY 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 CITY within 30 days of the completion of the work described herein.

CITY will acquire new rights of way in the name of STATE, CITY or OWNER through negotiation or condemnation and when acquired in either STATE or CITY’s name, shall convey same to OWNER by Easement Deed. CITY’s liability for such rights of way will be at the proration shown for relocation work involved under this Agreement.

It is understood that said highway is a federal-aid highway and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement by reference; provided, however, the provisions of any agreements entered into between the CITY 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 (FHWA), shall govern in lieu of the requirements of said 23 CFR Part 645.
IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

CITY OF STOCKON:

By: Kurt Wilson  
City Manager, City of Stockton

AT&T:

By:  
Name:  
Title: AREA MANAGER  
Date: 1/14/14

ATTEST:

By: Bonnie Paige  
City Clerk, City of Stockton

APPROVED AS TO FORM AND PROCEDURE:

By: John Luebberke  
City Attorney

Distribution: 1 original to City of Stockton  
1 original to AT&T  
1 copy to Caltrans R/W Utility File