DISTRIBUTION 04  COUNTY ALA  ROUTE 185,112  POST MILE 3.2/10.5  EA 2A400
FEDERAL AID NUMBER  FTA Funded  OWNER'S PLAN NUMBER  AC Transit Utility Relo, Fruitvale Ave, OKLD
FEDERAL PARTICIPATION  On the project □ YES □ NO  On the Utilities □ YES □ NO

UTILITY AGREEMENT NO.  1908.11  DATE

Project Description: The Alameda Contra Costa Transit District, a political subdivision of the State of California, hereinafter referred to as ("AC TRANSIT") proposes the East Bay Bus Rapid Transit ("BRT") improvement ("Project") through the cities of Oakland and San Leandro. Proposed construction will include dedicated transit lanes and light-rail like stations to improve bus service through Oakland and San Leandro. The alignment begins in downtown Oakland at 20th Street (Uptown station) between Telegraph Avenue and Broadway; follows Broadway to the 11th/12th Street couplet; continues on East 12th Street around Lake Merritt to the East 12th/International Boulevard couplet to 14th Avenue; then follows International Boulevard to the Oakland/San Leandro border. In San Leandro, the alignment follows East 14th Street to Davis Street, then Davis Street to San Leandro Boulevard, terminating at the San Leandro BART Station.

Pacific Bell Telephone Company, a California corporation dba AT&T California, hereinafter referred to as "OWNER", owns and maintains telephone distribution facilities within the limits of AC TRANSIT's Project, which require relocation to accommodate the AC TRANSIT BRT East Bay Project. Overhead telephone cables are located on Fruitvale Avenue and E. 10th Street.

It is hereby mutually agreed that:

I. WORK TO BE DONE

Work Performed by OWNER per OWNER's Plan:

In accordance with Notice to Owner No. 1908 dated, 11/22/2013, OWNER shall Relocate telephone conflicts within project area. All work shall be performed substantially in accordance with OWNER's Plan No. EST #1 dated 12/19/2013 consisting of one sheet, a copy of which will be on file in the office of the "BRT", located at the Alameda-Contra Costa Transit District at 1600 Franklin Street. Oakland, CA 94612.

Deviations from the OWNER's plan described above initiated by either AC Transit or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notice to Owner, approved by AC TRANSIT 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

OWNER's existing facilities are located in their present position pursuant to rights superior to those of AC Transit and will be relocated at 100% of AC TRANSIT's expense.

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 AC TRANSIT 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 California Department of Transportation's Department of Personnel Administration travel expense guidelines.

Pursuant to Labor Code 1720(a)(1), work performed by OWNER's contractor is a public work and is therefore subject to prevailing wage requirements.

OWNER reserves the right to request a Department of Industrial Relations (DIR) coverage decision regarding the applicability of Labor Code section 1720 (a) for Utility Relocations performed by contractors of OWNER. Unless a coverage decision is issued by the DIR, indicating the work performed by OWNER's contractors is not a public work pursuant to Labor Code section 1720, the prevailing wage language, and the applicability of prevailing wages is a requirement of the Utility Agreements.

OWNER shall verify compliance with this requirement in the administration of its contracts referenced.

In connection with the work under this Agreement, OWNER agrees to comply and to require its contractors to comply with Federal Transit Administration "Buy America" requirements set forth in 49 USC 5323(j) and 49 C.F.R. 661.7, subject to any waivers that may be granted by the FTA under 49 C.F.R. 661.7 or otherwise. Provided that, prior to commencement of construction of the work, if it is determined by OWNER that OWNER cannot so comply, OWNER may place the work on hold pending the FTA granting waivers or pending the parties agreeing upon other arrangements to provide for compliance.

If the final project design is not made available to OWNER prior to the date of this Agreement or changes after the date of this Agreement such that OWNER is unable to develop a list of products it will need to use for the work that is the subject of this Agreement prior to the date of this Agreement, should OWNER determine after receipt of the project design that any of the products would require a Buy America waiver of the type set forth in applicable regulations from the Federal Transit Administration, OWNER shall notify AC TRANSIT and shall not be responsible for any delays to its work hereunder that may arise due to OWNER awaiting a reply on a waiver request or pending the parties' reaching another mutually agreed upon arrangement for the product.

IV. PAYMENT FOR WORK

AC TRANSIT shall pay its share of the actual and necessary cost of the herein described work within 45 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 AC TRANSIT 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 AC TRANSIT for the “used life” or accrued 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 AC TRANSIT 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 AC TRANSIT within 180 days after the completion of the work described in Section I above. If AC TRANSIT 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 AC TRANSIT has delivered to OWNER fully executed Director’s Deeds, Consents to Common Use or Joint Use Agreements for OWNER’s facilities (if required), AC TRANSIT 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 AC TRANSIT processes a final bill for payment more than 180 days after notification of completion of OWNER’s work, payment of the late bill may be subject to allocation and/or approval by AC TRANSIT’s General Manager.

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, AC TRANSIT shall not pay final bills which exceed the estimated cost of this Agreement without adequate documentation acceptable to AC TRANSIT of the reason for the increase of said cost from the OWNER and approval of documentation by AC TRANSIT. 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 AC TRANSIT Board of Directors.

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, require the prior concurrence of AC TRANSIT.

Detailed records from which the billing is compiled shall be retained by 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 AC TRANSIT upon receipt of AC TRANSIT billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of AC TRANSIT Liability Claim Letter request of 5/28/2013 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 AC TRANSIT’s Project, which precipitated this Agreement, is canceled or modified so as to eliminate the necessity of work by OWNER, AC TRANSIT will notify OWNER, in writing, and AC TRANSIT reserves the right to terminate this Agreement by Amendment.
Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

All obligations of AC TRANSIT under the terms of this Agreement are contingent upon the acceptance of this Agreement by AC TRANSIT.

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

THE ESTIMATED COST TO AC TRANSIT FOR THE ABOVE DESCRIBED WORK IS $ 19,938.85.

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

ALAMEDA CONTRA COSTA TRANSIT DISTRICT, a political subdivision of the State of California
By: ____________________________

Its: ____________________________
Date: 2/3/19

PACIFIC BELL TELEPHONE COMPANY, a California corporation dba AT&T California

BY: ____________________________

Its: ____________________________
Date: 2-28-2014

APPROVED AS TO FORM AND CONTENT

By: ____________________________
Title: Attorney IV
Date: 2/13/14