

Memorandum of Agreement

This Memorandum of Agreement ("Agreement") is made and entered into this 5th day of June, 2018, by and between the City of San Diego, a municipal corporation of the State of California ("CITY"), and Pacific Bell Telephone Company, a California corporation dba AT&T California ("AT&T"). Throughout this Agreement, CITY and AT&T may be referred to in the singular as "Party" or collectively as "Parties." This Agreement is made with reference to the following facts:

Recitals

WHEREAS, AT&T is a telephone corporation as defined in Section 234 of the California Public Utilities Code ("CPUC") and is authorized by the California Public Utility Commission to conduct business in the State of California; and

WHEREAS, as a telephone corporation, AT&T maintains a State Franchise under CPUC Section 7901 to construct and maintain telephone lines and appurtenant equipment ("Facilities") along and upon the public streets, roads, and highways within CITY and at such points as not to incommode the public use of the road or highway ("ROW"); and

WHEREAS, the CITY's Public Works Department City Engineer, in performance of designing the construction of CITY's Regents Road Widening from Executive Drive to Genesee Avenue (the "Project"), determined that the location of AT&T's Facilities were in such close proximity to the Project that they would interfere with or obstruct the use of the street and incommode the CITY in the construction of the Project; and

WHEREAS, on or about December 21, 2016, CITY notified AT&T of its Project and requested AT&T to move, alter or relocate its Facilities to another location within the ROW to avoid such interference or obstruction, at AT&T's expense, to make way for a proper governmental use of the ROW; and

WHEREAS, due to the nature, location, extensive cost, and time required for relocating its Facilities, as an alternative, AT&T engineers recommended to the CITY to modify its engineering plan to protect AT&T's Facilities in place (the "Redesign"); and

WHEREAS, this Agreement is written to memorialize certain facts, prior agreements, and performances by and between the Parties;

NOW, THEREFORE, in consideration of the foregoing, the Parties mutually promise and agree as follows:

1. CITY has undertaken the work associated with the Redesign of the Project for the protection in place of AT&T Facilities pursuant to plans and specifications as shown within drawings 32643-1 thru 48 D (the redesign changes are clouded on the drawings

and labeled as delta 6 and delta7) reviewed and accepted by AT&T, and CITY shall pursue the project to completion, without interference to AT&T's Facilities.

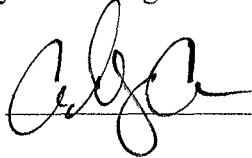
2. Within forty-five (45) days after the mutual execution and delivery of this Agreement, AT&T shall pay the City an amount not to exceed two hundred fifty thousand dollars (\$250,000), as payment in full of AT&T's obligation to pay for the Redesign and associated construction work of the Project, and upon such payment AT&T shall have no further payment obligation associated with either the Redesign or the Project.
3. City agrees to defend (with counsel approved in writing by each Party), indemnify and save AT&T, its respected officers, agents, employees, authorized representatives, or any other person deemed necessary, harmless from loss, damage, or injury to persons or property, including all legal costs and attorney's fees, arising in any manner out of performance occurring by reason of anything done or omitted to be done under or in connection with any work relating to the Redesign and construction work of the known duct bank on Regents Road along the curb line, and Modular Wetlands work relating to the Redesign or obligations performed or to be performed under this Agreement. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein. This section shall survive the expiration of this agreement.
4. This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, heirs, administrators and assigns.
5. The interpretation and enforcement of this Agreement shall be controlled by the laws of the State of California.
6. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any and all prior oral or written agreements with respect to the subject matter hereof.
7. Each of the Parties hereto covenants and warrants that it is duly qualified to do business in California and that its execution of this Agreement has been fully authorized.
8. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the year and day first above written and this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution Number 311737, authorizing such execution.

City of San Diego, a municipal corporation of the State of California
Mayor or Designee

Pacific Bell Telephone Company, California Corporation, dba AT&T California

By: 

By: 

Cindy Crocker
Principal Contract Specialist
Public Works Contracts

Printed Name: Raul Cuda

Title: Area Manager Engineering

Date: 6/4/18

Date: 2/26/2018

I HEREBY APPROVE the form of the forgoing Agreement
MARA W. ELLIOTT, City Attorney

By: 
Ryan Gerity, Deputy City Attorney

Date: 8/5/18

RR-311737

Tues 5/15/18
(R-2018-529) Item
102

RESOLUTION NUMBER R- 311737

DATE OF FINAL PASSAGE MAY 22 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE EXECUTION OF A
MEMORANDUM OF AGREEMENT WITH AT&T FOR THE
REGENTS ROAD WIDENING PROJECT.

WHEREAS, the Regents Road Widening Project (Project) provides improvements to widen Regents Road to a modified Four-Lane Major Street from Executive Drive to Genesee Avenue. These improvements include two additional through lanes, a raised median, traffic signal modifications and Class II bike lanes; and

WHEREAS, the City of San Diego (City) requested the relocation of AT&T facilities that would interfere with the construction, but due to the extensive cost and time required for relocating the facilities, AT&T asked the City to modify its engineering plans to protect AT&T's facilities in place; and

WHEREAS, the City and AT&T will enter into a Memorandum of Agreement to address the additional scope which was added to the Project and to specify that AT&T will reimburse the City of San Diego for the total additional costs related to the redesign and additional construction work in a total amount not to exceed \$250,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee is authorized to execute a Memorandum of Agreement with AT&T in an amount not to exceed \$250,000 under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 311737.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to increase the Fiscal Year 2018 Capital Improvement Program (CIP) Budget in S-00881, Regents Road Widening-Executive Drive to Genesee Avenue, and to accept, appropriate, and expend an amount not to exceed \$250,000.00, Fund 400264, Private and Others Contributions CIP, for the purpose of a Memorandum of Agreement, contingent upon the City Comptroller providing one or more certifications that the funds are or will be on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By AAA
for: Ryan P. Gerrity
Deputy City Attorney

RPG:jls
April 30, 2018
Or.Dept:Public Works
Doc. No.: 1740884

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 15 2018.

ELIZABETH S. MALAND
City Clerk

By Ag. Bracy
Deputy City Clerk

Approved: 5/21/18
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 15 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 22 2018.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *City Clerk*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 311737

Passed by the Council of The City of San Diego on May 15, 2018, by the following vote:

YEAS: BRY, ZAPP, WARD, CATE, ALVAREZ, GÓMEZ.

NAYS: NONE.

NOT PRESENT: COLE, SHERMAN.

RECUSED: KERSEY.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Stacy D. Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-311737, approved on May 15, 2018. The date of final
passage is May 22, 2018.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Stacy Ready, Deputy