

## REPORT TO CITY COUNCIL

Approved by:



Keith Helmuth, Department Director



Arnaldo Rodriguez, City Manager

Council Meeting of: August 7, 2019

Agenda Number:     B-9    

**SUBJECT:**       **Consideration of a Resolution Approving an Aerial to Underground Conversion Agreement with Pacific Bell Telephone Company DBA AT&T California for the Olive Avenue Widening Project and Authorizing Payment for Estimated Costs in the amount of \$107,999.56**

### RECOMMENDATION:

Staff recommends that the City Council (Council) adopt a resolution:

1. Approving the Aerial to Underground Conversion Agreement with Pacific Bell Telephone Company DBA AT&T California for the Olive Avenue Widening Project.
2. Approving Payment of \$107,999.56 for AT&T's estimated costs associated with the underground conversion project.
3. Authorizing the Mayor to sign the Agreement on behalf of the City of Madera.

### SUMMARY:

The Council, at their March 20, 2019 meeting, approved an agreement with QK (Quad Knopf, Inc.) for professional engineering services as relates to the Rule 20B Utility Underground Conversion of AT&T facilities for the Olive Avenue Widening Project. QK has completed the design and coordination with AT&T. Their efforts were instrumental in the timely development of this Aerial to Underground Conversion Agreement by AT&T necessary to convert the existing overhead facilities to underground with the Olive Avenue Widening Project subject to the terms and conditions of the agreement.

### DISCUSSION:

The Project will consist of widening and reconstructing Olive Avenue between Gateway Drive and Roosevelt Street and pavement overlay, modifications to the medians, and restriping of Olive

Avenue between Roosevelt Street and Knox Street consistent with the adopted Plan Line. The Project will include a new Union Pacific Rail Road crossing protection and signal, and installation of traffic signals at the intersections of Olive Avenue at Roosevelt Street and Olive Avenue at Knox Street. The project also includes street widening improvements to meet collector street Standards on Knox Street between Neplus Way and Olive Avenue.

Within the Project, there is a heavy concentration of overhead electrical, telephone, and cable distribution facilities that need to be removed and/or be relocated. Undergrounding the utilities in lieu of relocating poles that are in conflict is consistent with previously constructed projects on arterial streets connecting with collector streets. As the applicant, the City will install conduit, vaults and manholes necessary for the undergrounding of communications facilities and AT&T will install wiring and cable and make connections for the underground system.

QK coordinated with both PG&E and Comcast for joint trench opportunities with AT&T. City has received 90% design drawings from both PG&E and Comcast. Said utilities are in the process of finalizing their design and estimates in preparation for the conversion agreements with the City.

**FINANCIAL IMPACT:**

The costs associated with this agreement will be paid for out of the Utility Undergrounding portion of the Olive Avenue Widening Project Budget included in the 2019/20 Fiscal Year Capital Projects Budget.

There will be no impact to the City's General Fund for the design and construction costs for the Utility Underground District.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Action 126 – The project supports the strategy for providing clean attractive streets that are safe and aesthetically pleasing. The requested action is for the improvement of infrastructure and is not in conflict with any of the actions or goals contained in the plan.

**ALTERNATIVES:**

Should Council not approve the Agreement or Payment for the undergrounding of the aerial utilities lines and poles, AT&T will not participate in the undergrounding of utilities necessary for completion of the Olive Avenue project.

**ATTACHMENTS:**

1. Resolution
2. Map – Utility Underground District 19 – Olive Avenue

**ATTACHMENT 1**

**RESOLUTION**

RESOLUTION NO. 19-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING AN AERIAL TO UNDERGROUND CONVERSION AGREEMENT WITH PACIFIC BELL TELEPHONE COMPANY DBA AT&T CALIFORNIA FOR THE OLIVE AVENUE WIDENING PROJECT AND AUTHORIZING PAYMENT FOR ESTIMATED COSTS IN THE AMOUNT OF \$107,999.56**

**WHEREAS**, a project to widen and improve Olive Avenue to arterial street standards from Gateway Drive to Knox Street, hereinafter called "Project", has been included in the Capital Improvement Program and carried over to the 2019/20 Fiscal Year Capital Projects Budget; and

**WHEREAS**, on November 7, 2018, the City Council of the City of Madera adopted Resolution No. 18-223 establishing Rule 20B Underground Utility District No. 19 for the Project; and

**WHEREAS**, the subject agreement is necessary for the relocation and undergrounding of AT&T Facilities within the boundaries of UUD 19; and

**WHEREAS**, AT&T has requested advance payment of the estimated costs in the amount of \$107,999.56 to implement the aerial to underground conversion; and

**WHEREAS**, the actual costs will be determined upon completion of the conversion and may result in a refund to or additional payment from the City; and

**WHEREAS**, costs associated with the utility undergrounding are included in the Project budget.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Agreement with Pacific Bell Telephone Company, DBA AT&T California, a copy of which is attached hereto as Exhibit 1 and referred to for more particulars, is approved.
3. The Mayor is authorized to sign the Agreement on behalf of the City.
4. This Resolution is effective immediately upon adoption.

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**EXHIBIT 1**

**AERIAL TO UNDERGROUND CONVERSION AGREEMENT**

**OLIVE AVE FROM GATEWAY TO KNOX AVE.**

**AERIAL TO UNDERGROUND CONVERSION AGREEMENT  
(APPLICANT TO CONSTRUCT USS)**

**(RULE 32.A.2)**

**BETWEEN**

**CITY OF MADERA, CA.**

**and**

**PACIFIC BELL TELEPHONE COMPANY**

**DBA AT&T CALIFORNIA**

**RE**

**OLIVE AVE FROM GATEWAY TO KNOX AVE.**

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THIS AGREEMENT (“Agreement”) is between CITY OF MADERA, a California Municipality corporation (“Applicant”), and PACIFIC BELL TELEPHONE COMPANY, a California corporation doing business as AT&T CALIFORNIA (“AT&T”) (collectively the “Parties”).

## **I. DEFINITIONS.**

As used in this Agreement, the following terms apply:

- A. The term “Tariff” refers to Schedule Cal. P.U.C. No. A2, Rule 32.A.2.
- B. The terms “Underground Supporting Structure” and “USS” include, but are not limited to, conduit, inner duct, manholes, service boxes, and related equipment.
- C. The terms “Trench” and “Trenching” include, but are not limited to, excavating, backfilling, compacting, and, as necessary, breaking and replacing pavement, sidewalks, driveways, curbs and gutters, and restoring all other surface features disturbed by underground construction including landscaping, plus the cost of performing such work.
- D. The term “Hazardous Substance” refers to any substance, material or chemical that is or becomes regulated under applicable local, state, or federal law, regulation, or ordinance.
- E. The term “District” refers to the area in/on/along Olive Ave, from Gateway to Knox, where the undergrounding of existing aerial facilities is to take place.
- F. The term “Project” means all of the work required to underground existing aerial facilities within the District.
- G. The term “CPUC” refers to the California Public Utilities Commission.

## **II. RECITALS.**

- A. Applicant has asked AT&T to replace its existing aerial communication facilities with underground communication facilities within the District.
- B. AT&T is willing to underground its existing aerial communication facilities within the District, subject to the terms and conditions of this Agreement.

In consideration of the above, the Parties agree as follows:

## **III. SPECIFIC PROVISIONS.**

A. Tariff.

The Project will be conducted in accordance with the Tariff.

B. Construction.

1. Upon receipt of a copy of this Agreement that has been executed by Applicant and the advance payment described in Section III.G, AT&T will engineer and perform the work required to convert its existing aerial facilities to underground facilities in the area in the District shown on Applicants' plans, which are attached hereto as Exhibit A.
2. If, during the installation or construction of communications facilities, AT&T employees, subcontractors, or agents encounter any Hazardous Substance(s) that may be disturbed by AT&T's activities:
  - a. AT&T shall give prompt written notice of the discovery of the Hazardous Substance(s) to Applicant;
  - b. AT&T shall suspend performance under this Agreement until (1) containment and removal of the Hazardous Substance(s) has been completed and approved by the appropriate governmental agency(ies), if such approval is required, or approved by AT&T if governmental agency(ies) approval is not required, or (2) Applicant reasonably demonstrates that the Hazardous Substance(s) will not be disturbed by AT&T's activities;
  - c. AT&T's performance of its obligations under this Agreement is extended for the amount of time which it takes to complete containment/removal of the Hazardous Substance(s); and,
  - d. If Applicant elects not to remove/contain the Hazardous Substance(s), AT&T may terminate this Agreement without further liability by giving advance notice to Applicant no later than ten (10) days after the date the Applicant notifies AT&T of its decision not to remove/contain the Hazardous Substance(s). In this case, Applicant shall reimburse AT&T for AT&T's share of the USS cost paid by AT&T and for the costs incurred by AT&T for the placement of cables and wiring on the Project and the wrecking associated with that placement up to the effective date of the termination. Upon such payment, Applicant shall become the owner of said wire and cables.
3. Applicant shall be responsible for the construction and installation of the necessary USS along the public way and utility rights of way in the District and shall prepare all documents necessary to coordinate and implement the Project plans. The documents shall include, but shall not be limited to: (a) Project Plans and Specifications, which shall be prepared

in accordance with specifications and drawings furnished to Applicant by AT&T; (b) documents that delineate all USS to be constructed and installed within the District; (c) a Bid Package covering the construction and installation of the USS for which Applicant is responsible; (d) separate agreements with Participants pertaining to the construction of facilities for the Project; and (e) a contract ("Contract") with an independent contractor for the construction and installation of USS for which Applicant is responsible under the Project. **APPLICANT SHALL NOT DEVIATE FROM AT&T'S TRENCH SPECIFICATIONS WITHOUT AT&T'S PRIOR WRITTEN CONSENT.**

4. Applicant shall award the Contract to a qualified bidder. The terms and conditions of the Contract shall oblige the Contractor to furnish all materials, adhere to the Project Plans and Specifications, and install the USS at the locations designated on the map attached to this Agreement as Exhibit A. Applicant shall have full supervision of and control over the independent contractor's construction and installation of the USS. However, AT&T shall be given the opportunity to inspect the construction and installation of the USS and to coordinate with Applicant to ensure that the construction and installation are completed in accordance with the Project plans and specifications.

Applicant shall require all property owners who are served by the aerial facilities to be replaced within the District to provide and maintain the USS on their property.

C. Term.

This Agreement is effective upon execution and shall continue in effect until terminated or canceled as provided by law or this Agreement.

D. Title

Upon inspection and acceptance in writing of the USS by AT&T, title to the USS and all associated communications facilities placed by or for AT&T, except the underground service connections, shall vest in AT&T, provided that such is free of all liens and encumbrances.

E. Tax Liability

Applicant shall pay, and hold AT&T harmless from and against, all penalties, interest, taxes or other charges that are levied or assessed against Applicant.

F. Payment.

Applicant shall pay to AT&T within forty-five (45) days after execution of this Agreement the sum of **One hundred seven thousand, nine hundred ninety nine dollars and 56 cents (\$107,999.56)**, which represents the estimated cost of AT&T preparing specifications and drawings for the USS and inspecting Applicant's trenching and installation of the USS.

If applicable, Applicant shall also pay to AT&T a **(NO CIAC)%** tax component of **CIAC NOT APPLICABLE** collected for Federal and State Income Tax in accordance with CPUC decision 87-09-026.

Applicant shall send payments to:

AT&T California  
2700 Watt Ave, Room 3012  
Sacramento, CA 95821  
ATTN: Debbie Beck.

G. Cancellation, Modification or Deferment.

If Applicant cancels, modifies or defers its request for conversion of the aerial facilities to underground facilities within the District, Applicant shall pay all charges incurred by AT&T, in accordance with the Tariff.

H. Indemnity; Limitation of Liability.

1. Applicant shall indemnify, defend at AT&T's request and at no cost or expense to AT&T, and hold harmless AT&T and its officers, agents and employees, as well as its associated and affiliated companies and their respective officers, agents, and employees ("Indemnitees"), from and against any and all losses, damages, expenses, costs, penalties, fines, fees (including reasonable attorney's and consultant's fees), or liabilities (collectively "Liabilities"), incurred as a result of any injury to or death of any person(s) or damage to any property(ies) arising out of or in connection with the materials used or the work performed by Applicant under this Agreement or the condition of the Project's property, including environmental contamination, except where such Liabilities are caused by the sole negligence or willful misconduct of Indemnitees.
2. AT&T shall notify Applicant within a reasonable time of any written claim or demand against AT&T for which Applicant is responsible under this section. Applicant shall also (a) keep AT&T fully informed as to the progress of such defense, and (b) afford AT&T, at its own expense, an opportunity to participate with Applicant in the defense or settlement of such claims, demand, lawsuits or other legal proceedings.
3. AT&T shall indemnify, defend, and hold harmless Applicant, from and against any and all losses, damages, expenses, costs, penalties, fines, fees (including reasonable attorney's and consultant's fees), or liabilities

(collectively "Liabilities"), incurred as a result of any injury to or death of any person(s) or damage to any property(ies) arising out of or in connection AT&T's installation of facilities in the USS, except where such Liabilities are caused by the negligence or willful misconduct of Applicant. Applicant shall notify AT&T within a reasonable time of any written claims or demand against Applicant for which AT&T is responsible under this section.

4. These indemnities shall survive the termination or cancellation of this Agreement or any provision to the contrary herein.
5. IN NO EVENT WILL AT&T BE LIABLE TO APPLICANT FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BY TORT OR CONTRACT, INCLUDING LOST REVENUES, LOSS OF PROFITS OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, NEGLIGENT PERFORMANCE OR FAILURE TO PERFORM, OR A DEFECT OR FAILURE TO PERFORM OR DEFECT OF CABLE OR WIRING, REGARDLESS OF THE FORESEEABILITY THEREOF.

I. Insurance.

1. With respect to Applicant's performance under this Agreement, and in addition to Applicant's obligation to indemnify, Applicant shall at its sole cost and expense, maintain the insurance coverages and limits required by this Section and any additional insurance and/or bonds required by law:
  - i. at all times during the term of this Agreement and until completion of all work associated with this Agreement, whichever is later; and
  - ii. with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later. If a "claims-made" policy is maintained, the retroactive date must precede the commencement of work under this Agreement;
2. Applicant shall also require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverages, requirements, and limits at least as broad as those listed in this section from the time when the subcontractor begins work, throughout the term of the subcontractor's work and, with respect to any coverage maintained on a "claims-made" policy, for two (2) years thereafter;

- a. procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of “A-” or better and a Financial Size Category of “VII” or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers’ Compensation insurance, Applicant may procure insurance from the state fund of the state where work is to be performed; and
- b. deliver to AT&T certificates of insurance stating the types of insurance and policy limits. Applicant shall provide or will endeavor to have the issuing insurance company provide at least 30 days advance written notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to AT&T. Applicant shall deliver such certificates:
  - i. prior to commencement of any work;
  - ii. prior to expiration of any insurance policy required in this Section; and
  - iii. for any coverage maintained on a “claims-made” policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later.

3. The Parties agree:

- a. the failure of AT&T to demand such certificate of insurance or failure of AT&T to identify a deficiency will not be construed as a waiver of Applicant’s obligation to maintain the insurance required under this Agreement;
- b. that the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect Applicant, nor be deemed as a limitation on Applicant’s liability to AT&T in this Agreement;
- c. Applicant may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance; and

Applicant is responsible for any deductible or self-insured retention.

4. The insurance coverage required by this section includes:

- a. Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:

\$500,000 for Bodily Injury – each accident

\$500,000 for Bodily Injury by disease – policy limits

\$500,000 for Bodily Injury by disease – each employee

To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.

In states where Workers' Compensation insurance is a monopolistic state-run system, Applicant shall add Stop Gap Employers Liability with limits not less than \$500,000 each accident or disease.

- b. Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:

\$2,000,000 General Aggregate limit;

\$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence;

\$1,000,000 each occurrence limit for Personal Injury and Advertising Injury;

\$2,000,000 Products/Completed Operations Aggregate limit;

\$1,000,000 each occurrence limit for Products/Completed Operations;

\$1,000,000 Damage to Premises Rented to You (Fire Legal Liability).

The Commercial General Liability insurance policy must:

- i. include AT&T, its affiliates, and their directors, officers, and employees as Additional Insureds. Applicant shall provide a copy of the Additional Insured endorsement to AT&T. The Additional Insured endorsement may either be specific to AT&T or may be “blanket” or “automatic” addressing any person or entity as required by contract. A copy of the Additional Insured endorsement must be provided within 60 days of execution of this Agreement and within 60 days of each Commercial General Liability policy renewal;
  - ii. include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees; and
  - iii. be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- c. Business Automobile Liability insurance with limits of at least \$1,000,000 each accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles.
  - d. Umbrella/Excess Liability insurance with limits of at least \$1,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Auto Liability, and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.

J. Warranty.

- 1. Applicant warrants that that for a period of two (2) years following acceptance of the USS by AT&T, all work and materials to be furnished under this Agreement:
  - a. shall conform in all respects to the requirements of this Agreement;
  - b. are adequate for the purposes for which they are intended;
  - c. are free from any defects in design, materials, workmanship and title including, but not limited to, defects that will cause caving or sinking of the Trench, the USS, paving, or other materials.
- 2. Applicant warrants that qualified personnel will perform all work promptly and with diligence, to AT&T’s reasonable satisfaction, and that all work and materials shall be subject to all statutory and express or implied warranties. This warranty shall survive inspection, acceptance, termination and payment.



3. Except as disclosed to and acknowledged by AT&T in writing, Applicant is not aware of the presence of any Hazardous Substance at the locations on the Project where AT&T will be installing cable and wiring and performing wrecking in association with such installations.

K. Liens.

Applicant and its agents and contractors shall keep the USS free from any statutory or common law lien arising out of any work performed, materials furnished or obligations incurred by Applicant, its agents or contractors. In the event a lien is recorded against the USS and it is not removed from the record within ten (10) days after notice is given by AT&T to Applicant to do so, AT&T shall have the right to pay and discharge the lien without regard to whether the lien shall be lawful, valid or correct. Applicant shall, within thirty (30) days after receiving written notice from AT&T, reimburse AT&T for any such claim paid by it.

L. Licenses and Easements.

Prior to construction of the Project, Applicant shall, at no cost to AT&T, furnish AT&T with any and all licenses or grants of easements that are necessary to accommodate the Project, including the construction and maintenance of AT&T's facilities.

M. Performance.

If Applicant should default in the performance of any work that it is obligated to perform under this Agreement within the time allowed for such work, AT&T may elect, by written notice to Applicant, to perform the work at Applicant's sole risk and expense and Applicant shall pay to AT&T upon demand AT&T's actual costs for performing the work.

N. Damage to Facilities.

Applicant and its employees, agents and contractors shall exercise special precaution and care to avoid causing damage to AT&T's facilities in performing work under the Project. Applicant shall assume responsibility for any and all losses, costs and expenses arising out of, caused by, or in any way connected with such damages, including consequential damages. Applicant shall immediately report in writing the occurrence of any such damage to AT&T. Applicant shall, on demand, reimburse AT&T for the entire expense incurred in replacing or repairing the damage.

O. Schedule of Work.

AT&T shall not commence detailed engineering of the Project prior to receiving a copy of this Agreement that has been executed by Applicant. AT&T shall have its facilities converted contingent upon mutually acceptable schedules, timely

obtaining of permits, licenses and other documents, and not being delayed by those uncontrollable forces described in Section III.Q below.

P. Force Majeure.

AT&T shall not be held liable to Applicant for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, the presence of archeological or historical artifacts or Hazardous Substances on, in, or near the Project, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of carriers. If any of the foregoing events occur, AT&T agrees, if requested by Applicant, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as Applicant agrees to reimburse AT&T for the incremental actual costs of such efforts.

Q. Compliance With Laws.

Applicant shall comply with all applicable federal, state, county, and local statutes, laws, ordinances, regulations, and codes. Applicant further agrees to comply with all applicable Executive Orders and regulations, including, but not limited to, those that are attached to this Agreement as Exhibit C. As used in Exhibit C, "Contractor" means Applicant.

**IV. GENERAL PROVISIONS.**

A. Assignment.

Applicant shall not wholly or partially assign this Agreement without the prior written consent of AT&T.

B. Binding Effect.

This Agreement shall be for the benefit of and is binding upon the respective successors and assigns of the parties hereto.

C. Termination.

This Agreement automatically terminates upon completion and acceptance of the USS by AT&T. In the event of any material default or breach of this Agreement by Applicant, in addition to all other rights and remedies which AT&T may have at law or in equity, AT&T shall have the immediate right to terminate this Agreement by giving ten (10) days prior written notice of termination. The notice shall specify the cause of termination and shall give Applicant a reasonable

opportunity to cure and correct any such cause. In the event this Agreement is terminated or suspended as provided herein, AT&T shall not be liable to Applicant or any other person or entity for any losses, damages or claims that arise as a result of termination. Applicant shall pay to AT&T all costs and expenses incurred by AT&T prior to termination of this Agreement. Any termination of this Agreement in whole or in part shall not release Applicant from any liability or obligation under this Agreement, whether of indemnity or otherwise, that accrued or that may be accruing or that arises out of any claim that may have accrued or may be accruing at the time of termination.

D. Attorneys' Fees.

If any action is brought to adjudicate the rights granted in this Agreement or to enforce any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees in an amount to be determined by a court or a tribunal of competent jurisdiction.

E. Entire Agreement.

This Agreement and the Exhibits attached hereto that are incorporated herein by this reference constitute the entire Agreement between the parties with respect to the subject matter hereof. All prior agreements, representations, statements, negotiations and understandings are superseded.

F. Independent Contractor.

Applicant and its agents, employees and contractors shall perform all work under this Agreement as independent contractors and not as affiliates, partners, joint ventures, agents, employees, servants or assigns of AT&T.

G. Jurisdiction.

This Agreement shall be governed by the laws of the State of California and is subject to the applicable rules, regulations and tariffs on file with the CPUC.

H. Notices.

All notices and other communications hereunder shall be in writing addressed as follows and shall be deemed given when: delivered in person, delivered to an

agent, such as an overnight or similar delivery service, or three days after being deposited in the United States mail, postage prepaid:

APPLICANT

AT&T California

City of Madera,

2700 Watt Ave, Room 3012

205 W. Fourth St.

Sacramento, CA 95821

Madera, CA.93637

Attn: Debbie Beck

Attn: Keith Helmuth

I. Waiver and Amendment.

The provisions of this Agreement shall not be waived, altered, or amended by any representations or promises of any party unless consented to in writing by all parties hereto.

The duly authorized representatives of Applicant and AT&T have executed this Agreement by affixing their signatures on the dates indicated below.

CITY OF MADERA

PACIFIC BELL TELEPHONE COMPANY

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

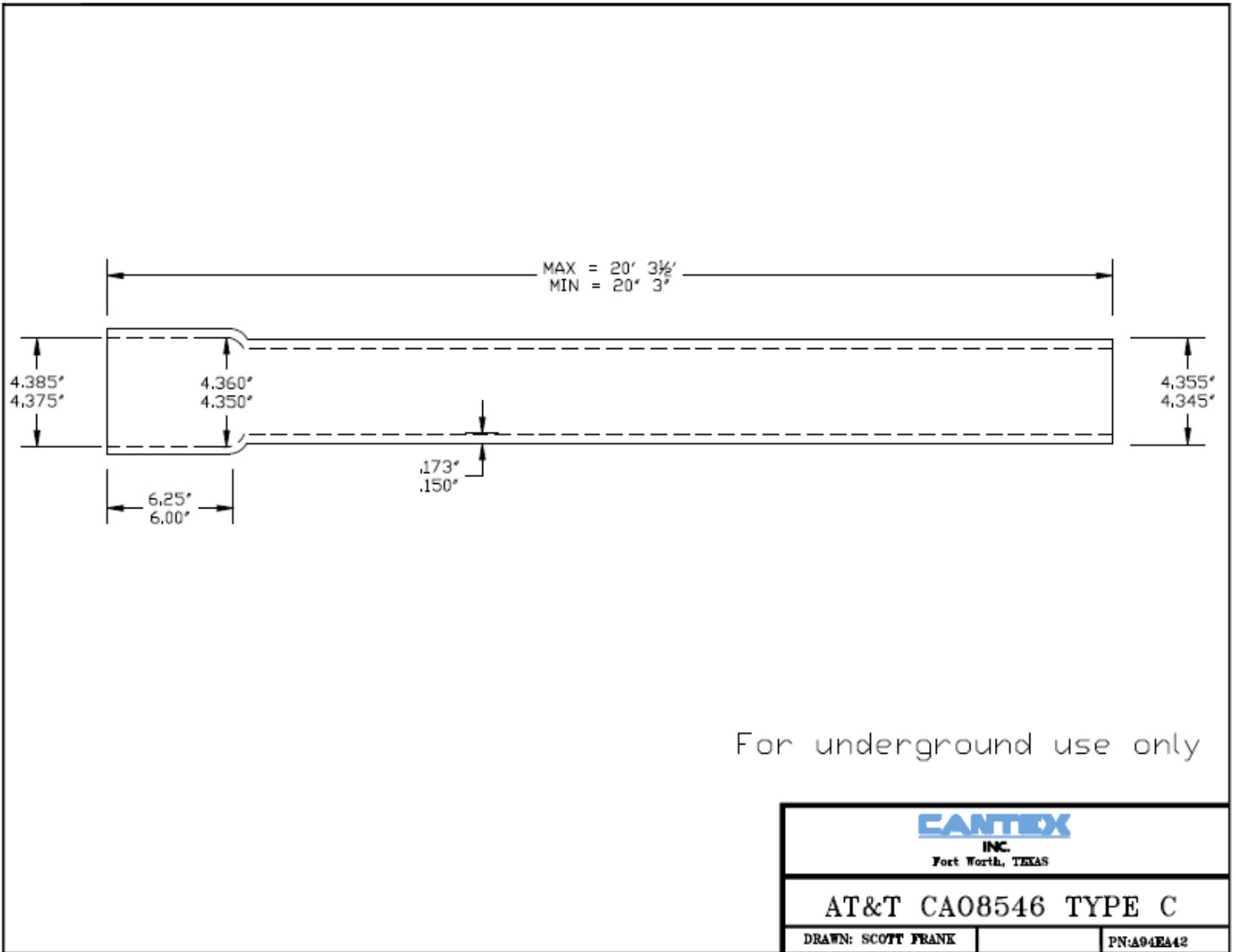
Printed Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Exhibit A**  
**Applicant's plans**

**Per Quad Knopf Drawings.**



**PACIFIC BELL**  
**CONDUIT, SPLICE BOX AND MANHOLE SPECIFICATIONS**

**DEVELOPER CONTRACTOR NOTES:**

- 1) Developer will construct to Pacific Bell's specifications.
- 2) Developer shall be responsible for loss of material, unreasonable damage, breakage, and any liability in connection with any material furnished by Pacific Bell.
- 3) Developer is responsible for the cost of repair, replacement or relocation made necessary by damage to telephone facilities until project is complete, inspected and accepted by Pacific Bell.
- 4) Developer is responsible to warranty substructure for a period of 2 years after final inspection of underground facilities. This will include relocating cost for non-traffic rated splice boxes, and other structure related to Pacific Bell's facilities in conflict with but not limited to drive-ways, alley ways, street lights, etc.
- 5) Call Pacific Bell Inspector 2 working days prior to start of construction at 442-2193 or 442-2191
- 6) Call Pacific Bell Engineer 2 working days prior to start of construction at 454-3774 or pgr 262-6102
- 7) Pacific Bell will provide manhole frame and covers and conduit. Developer may supply conduit. Reimbursement will be at Pacific Bells' current purchasing price. Reimbursement cost must be finalized prior to any conduit purchased, by Pacific Bell or the developer. Reimbursement is non-negotiable.
- 8) Trenching agent to provide Pacific Bell inspector with marked "as-built" plans upon completion of project. Any changes in design must be approved by Pacific Bell inspector prior to change.

**MANHOLES:**

- 1) Inspection of manholes and splice boxes required by Pacific Bell inspector prior to placement.
- 2) PTS 3560 a non-traffic rated splice box. 3' X 5' X 4'.
- 3) PTS 65 a traffic rated full size manhole. 4'-6" X 8'-6" X 6'-6".
- 4) PTS 38Y traffic rated full size manhole. 6'-0" X 12'-0" X 7'-0", including 3' extensions.
- 5) The top of manhole roof shall be a minimum of 24" below finished grade.
- 6) Conduit entrance into manholes to be placed as shown in detail on the conduit drawing.
- 7) The neck (collar) of manhole may be constructed of either precast sections or brick and mortar.
- 8) Steps in manhole necks (collars) will be located as follows:
  - a) First step to be placed 12" to manhole cover.
  - b) When the cover over the roof is 24" or more, additional steps are placed at 12" intervals-15" max.
  - c) 6" from step to neck spacing, climber facing towards oncoming traffic. Strop on traffic side.
- 5) Racking shall be installed in 3'X5'X4' splice boxes and all traffic rated full size manholes.
- 6) All manhole seams will be grouted and painted inside with masonry paint.
- 7) Cable racking ladders, etc. must be ordered separately.
- 8) Lower manhole termination holes shall be used first.
- 9) Manhole number and volume to be stamped on traffic side of frame.

**CONDUIT:**

- 1) Pacific Bell standard is 4" PTS 77 conduit. Only factory PTS-77 4" duct, bends, & sweeps will be accepted.
- 2) All bends & radii of less than 80' in non-metallic conduit must be concrete encased using minimum 5 sack mix.
- 3) Cover over conduit shall be a minimum of 36".
- 4) The conduit trench must be free of all large stones and other jagged pieces of material with bottom 1" of sand compacted and smooth before placing conduit in trench. Inspection required prior to back filling trenches.
- 5) All backfill 12" above conduit shall be of fine granular material or sand.
- 6) At least 24" of loose fill on first lift shall be placed before any machine tamper is used, thus eliminating crushed conduit.
- 7) The degree of compaction to be as specified by municipal ordinance.
- 8) Any repaving required shall be as specified by municipal ordinance.
- 9) Clearances from electrical substructures shall be a minimum of 12" of compacted dirt or 3" of concrete.
- 10) Clearances from all other substructures shall be a minimum of 6" when paralleling and crossing.
- 11) Pull rope must be provided in duct and all lateral ducts as shown on the conduit drawings. 3/8" poly rope.
- 12) All conduit must be proven by manrelling before it will be accepted by Pacific Bell.
- 13) Wall-to-wall measurements must be provided to Pacific Bell inspector or engineer, by placing and removing steel tape or steel cable through the longest duct between manholes and splice boxes.
- 14) Stub outs to property shall be made at property lines.

*48 hours before you dig call U.S.A. 800 642-2444. Underground Service Alert.*



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Xerox Multifunction

**EXHIBIT B**  
**AT&T'S ESTIMATED COSTS**

# AT&T COMMERCIAL SUBDIVISION / UNDERGROUNDING GENERAL CONDUIT, SPLICE BOX AND MANHOLE SPECIFICATIONS

## **DEVELOPER CONTRACTOR NOTES:**

- 1) Developer will construct to AT&T's specifications.
- 2) Developer shall be responsible for loss of material, unreasonable damage, breakage, and any liability in connection with any material furnished by AT&T.
- 3) Developer is responsible for the cost of repair, replacement or relocation made necessary by damage to telephone facilities until project is complete, inspected and accepted by AT&T.
- 4) Developer is responsible to warranty substructure for a period of 2 years after final inspection of underground facilities. This will include relocating cost for non-traffic rated splice boxes, and other structure related to AT&T's facilities in conflict with but not limited to driveways, alley ways, street lights, etc.\*
- 5) Call AT&T Inspector 2 working days prior to start of construction at \_\_\_\_\_.
- 6) Call AT&T Engineer 2 working days prior to start of construction at \_\_\_\_\_.
- 7) Manhole frame and covers and conduit will be provided by AT&T. Conduit may be supplied by developer, reimbursement will be at AT&T going rate. Reimbursement cost must be finalized prior to any conduit purchased, by AT&T or the developer.  
Reimbursement is non-negotiable.

## **MANHOLES:**

- 1) Inspection of manholes and splice boxes required by AT&T inspector prior to placement.
- 2) PTS 3660 a non-traffic rated splice box. 3' X 5' X 4'.
- 3) PTS 65 a traffic rated full size manhole. 4'-6" X 8'-6" X 6'-6".
- 4) PTS 38Y traffic rated full size manhole. 6'-0" X 12'-0" X 7'-0", including 3' extensions.
- 5) The top of manhole roof shall be a minimum of 36" below finished grade.
- 6) Manholes and 3'x5'x4' shall be placed on a bed of 6" gravel.
- 7) Conduit entrance into manholes to be placed as shown in detail on the conduit drawing.
- 8) The neck (collar) of manhole may be constructed of either precast sections or brick and mortar.
- 9) Steps in manhole necks (collars) will be located as follows:
  - a) First step to be placed 12" to manhole cover.
  - b) When the cover over the roof is 24" or more, additional steps are placed at 12" intervals-15" max.
  - c) 6" from step to neck spacing, climber facing towards oncoming traffic. Sump on traffic side.
- 10) Racking shall be installed in 3X5X4 splice boxes and all traffic rated full size manholes.
- 11) All manhole seams will be grouted and painted inside with masonry paint.
- 12) Cable racking ladders, etc. must be ordered separately.
- 13) Lower manhole termination holes shall be used first.
- 14) Manhole number and volume to be stamped on traffic side of frame.

## **CONDUIT:**

- 1) AT&T standard is 4" PTS 77 conduit. . Only factory PTS-77 4' duct, bends, & sweeps will be accepted.
- 2) All bends & radii of less than 80' in non metallic conduit must be concrete encased using minimum 5 sack mix.
- 3) Cover over conduit shall be a minimum of 36".
- 4) The conduit trench must be free of all large stones and other jagged pieces of material with bottom 1' of sand compacted and smooth before placing conduit in trench. Inspection required prior to back filling trenches.
- 5) All backfill 12" above conduit shall be of fine granular material or sand.
- 6) At least 24" of loose fill on first lift shall be placed before any machine tamper is used, thus eliminating crushed conduit.
- 7) The degree of compaction to be as specified by municipal ordinance.
- 8) Any repaving required shall be as specified by municipal ordinance.
- 9) Clearances from electrical substructures shall be a minimum of 12" of compacted dirt or 3" of concrete.
- 10) Clearances from all other substructures shall be a minimum of 6" when paralleling and crossing.
- 11) Pull rope must be provided in duct and all lateral ducts as shown on the conduit drawings. 3/8" poly rope.
- 12) All conduit must be proven by mandrel before it will be accepted by AT&T.
- 13) Wall -to-wall measurements must be provided to AT&T inspector or engineer, by placing and removing steel tape or steel cable through the longest duct between manholes and splice boxes.
- 14) Stub outs to property shall be made at property lines. Cap all stub outs that will not be used within 30 days.

***48 hours before you dig call U.S.A. 811. Underground Service Alert.***





### Estimate of Cost and Authority for Work Special Construction Charge and Invoice

Customer Request Number : 201184  
Project Number :

Date : 06/25/2019  
Customer ID : 119272

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**Billing Information**

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Billing Party's Name : CITY OF MADERA  
Phone : (559) 861-5418  
Billing Address : 205 WEST FOURTH STREET  
MADERA, CA 93637  
Contact Name : KEITH HELMUTH  
Phone : (559) 861-5418

Work Description & Engineering Remarks : UNDERGROUND OLIVE ST FR GATEWAY TO KNOX JOB #A01E7WY  
CITY TO TRENCH/PROVIDE STRUCTURE/CONDUIT

Expenses	Amount
Engineering Labor	\$ 17,896.73
Material Cost	\$ 11,945.11
Construction Labor	\$ 75,157.72
Contractor Cost	\$ 3,000.00
Salvage Credit	\$ 0.00
CIAC	\$ 0.00
<b>Total Estimated Costs</b>	<b>\$ 107,999.56</b>
<b>Advanced Payment</b>	<b>\$ 0.00</b>
<b>Total Amount Due</b>	<b>\$ 107,999.56</b>

OSPE Representative: BRIAN WELDON  
Title: OSP DESIGN - AND ASSIGNMENT -  
NETWORK CAPACITY PROVISIONING  
Phone #: (559) 454-3724

## Exhibit C

### Executive Orders and Associated Regulations

AT&T California and AT&T Nevada, as common carriers of telecommunications services, engage in work as contractors for various departments and agencies of the United States Government. Also, certain facilities may be constructed pursuant to federally assisted construction programs. Because of the foregoing, work under this contract may be subject to the provisions of certain Executive Orders, federal laws and associated regulations. To the extent that such Executive Orders, federal laws and associated regulations apply to the work under this contract, and only to that extent, Contractor agrees to comply with the provisions of all such Executive Orders, federal laws and associated regulations as no in force or as may be amended in the future, including, but not limited to the following:

#### 1. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS.

In accordance with Executive Order 11246, dated September 24, 1965, and 41 C.F.R. § 60-1.4, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of nonexempt contracts and subcontracts.

#### 2. CERTIFICATION OF NONSEGREGATED FACILITIES.

In accordance with Executive Order 11246, dated September 24, 1965, and 41 C.F.R. § 60-1.8, Contractor certifies that it does not and will not maintain or provide for its employees any facilities segregated on the basis of race, color, religion, sex, or national origin at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where such segregated facilities are maintained. The term "facilities" as used herein means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, provided that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes. Contractor will obtain similar certifications from proposed subcontractors prior to the award of any nonexempt subcontract.

#### 3. CERTIFICATION OF AFFIRMATIVE ACTION PROGRAM.

Contractor certifies that it has developed and is maintaining an Affirmative Action Plan as required by 41 C.F.R. § 60-1.40.

#### 4. CERTIFICATION OF FILING.

Contractor certifies that it will file annually, on or before the 31<sup>st</sup> of March, complete and accurate reports on Standard Form 100 (EEO-1) or such forms as may be promulgated in its place as required by 41 C.F.R. § 60-1.7.

#### 5. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA.

In accordance with Executive Order 11701, dated January 24, 1973, and 41 C.F.R. 60-250.20, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

#### 6. AFFIRMATIVE ACTION FOR HANDICAPPED PERSONS.

In accordance with Executive Order 11758, dated January 15, 1974, and 41 C.F.R. § 60-741.20, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

#### 7. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS.

48 C.F.R., Ch. 1, § 19.740(4) and 19.708(a) require that the following clause is included:

*Utilization of Small Business concerns and Small Disadvantaged Business Concerns (June, 1985)*

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by and Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned businesses, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

#### *Small Business and Small Disadvantaged Business Subcontracting Plan.*

Contractor, unless it is a small business concern, as defined in section 3 of the Small Business Act, agrees to adopt and comply with a small business and small disadvantaged business subcontracting plan, which shall be included in and made a part of this contract. The parties incorporate herein by this reference the regulations and contract clauses required by 48 C.F.R., Ch. 1, §§ 19.704(4) and 19.708(b) to be made a part of Government contracts and subcontracts.

#### 8. WOMEN-OWNED SMALL BUSINESSES.

As prescribed in 48 C.F.R., Ch. 1, § 19.902, the following clause is included in solicitations and contracts when the contract amount is expected to be over the small purchase threshold, unless (a) the contract is to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, or (b) a personal services contract is contemplated:

(a) "Woman-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

(b) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) Order of Preference. In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) Definitions. "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 C.F.R. § 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus area if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

#### *Labor Surplus Area Subcontract Program.*

(a) See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.

(b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities at prices no higher than obtainable elsewhere. The contractor shall --

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities; and

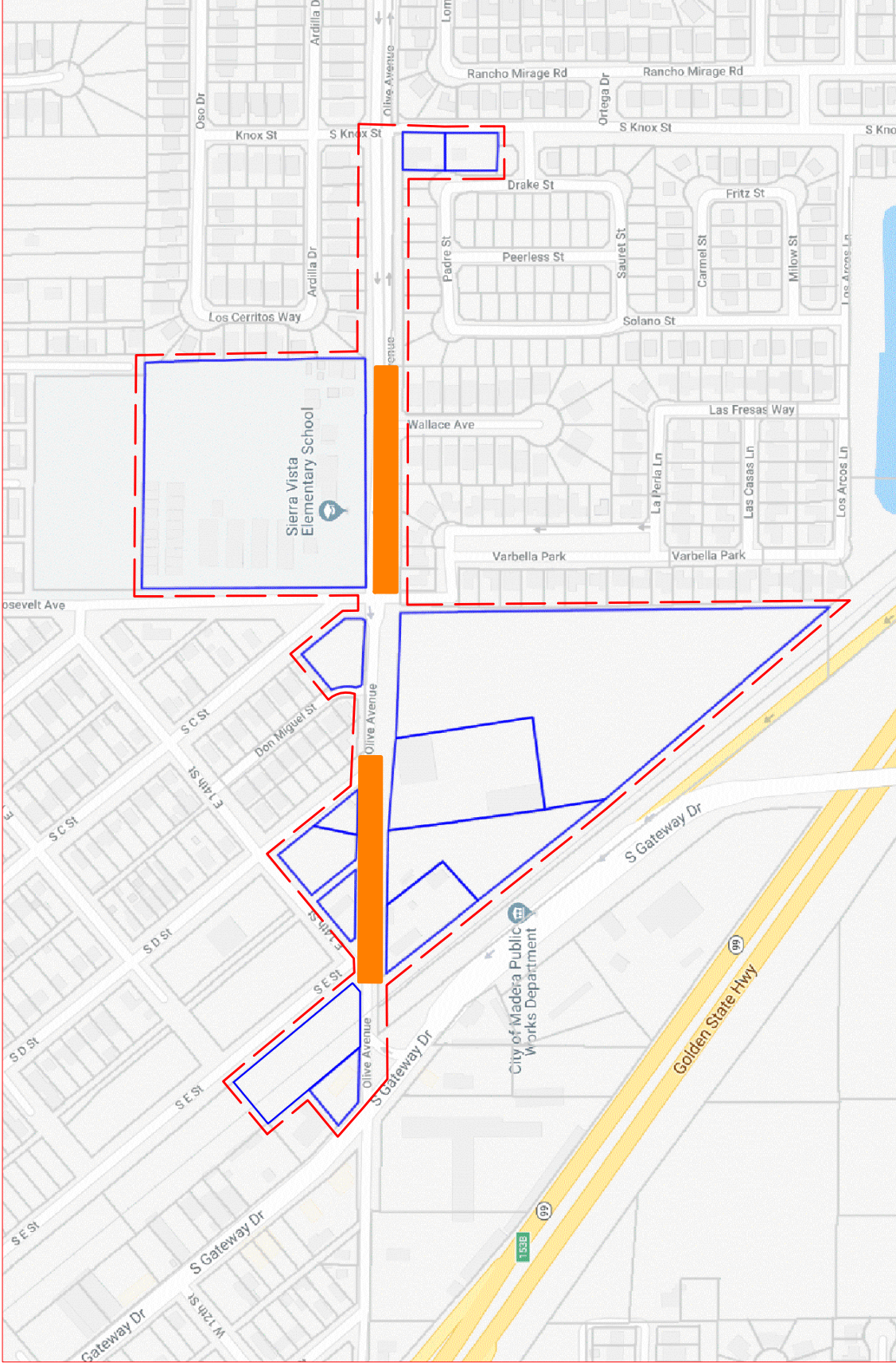
(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of subcontractor

**ATTACHMENT 2**

**MAP – UTILITY UNDERGROUND DISTRICT 19 – OLIVE AVENUE**

**CITY OF MADERA  
UNDERGROUND UTILITY  
DISTRICT # 19 - AT&T FACILITIES**



**LEGEND:**

- PROPOSED UNDERGROUND AT&T FACILITIES
- LOT LINES
- DISTRICT BOUNDARY