

MASTER COOPERATIVE AGREEMENT
FOR THE DESIGN AND
CONSTRUCTION OF RAIL TRANSIT PROJECTS

CITY OF LOS ANGELES
AND THE
LOS ANGELES COUNTY TRANSPORTATION COMMISSION

DATED: SEP 26 1991

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MASTER COOPERATIVE AGREEMENT
FOR THE
DESIGN AND CONSTRUCTION OF RAIL TRANSIT PROJECTS
BETWEEN
CITY OF LOS ANGELES
AND THE
LOS ANGELES COUNTY TRANSPORTATION COMMISSION

THIS AGREEMENT, dated SEP 26, 1991, is made by and between the Los Angeles County Transportation Commission ("LACTC") and City of Los Angeles ("City").

R E C I T A L S

A. The Los Angeles County Transportation Commission ("LACTC" or "Commission") is a public entity created by the State Legislature with countywide responsibilities, and is the policy making and authorizing organization for rail transit systems in the county.

B. The Rail Construction Corporation ("RCC") is a subsidiary corporation of LACTC and shall be the agent for LACTC in implementing the design and construction of rail transit systems.

C. Commission proposes to authorize design, construction and operation of facilities necessary and convenient for various rail transit systems (including "MOS-2" and other future portions of the Metro Rail Project, a portion of which is presently under construction) which systems will serve, and portions of its facilities will pass in, under, over or along public streets, highways, bridges, parks and other public ways of various municipal jurisdictions, including the City of Los Angeles, California.

D. From time to time the construction, reconstruction or improvement of these transit systems will require the rearrangement of portions of City's facilities. The parties desire to cooperate to the end that such rearrangements be held to a minimum consistent with Commission's and RCC's requirements and that when rearrangements are required, they be effected with the greatest expedition and least interference with the operations of either of the parties.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I
SCOPE AND DEFINITIONS

1.1. Scope of Agreement

This Agreement specifies (a) the procedures which RCC and City will follow in identifying, planning, designing and effecting Rearrangements of Facilities in order for RCC to construct and operate the Rail Projects and (b) the manner in which City will be reimbursed for its costs of such activities. Both RCC and City agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental agreements hereto. Further, the City agrees to assist RCC in the areas of building and safety, landscaping, transportation, civil engineering, street lighting, public works inspection, fire safety and police protection. This Agreement shall be automatically renewed for one year terms commencing July 1, 1992, unless either party provides written notice of termination to the other no later than sixty (60) days prior to the end of any term.

1.2. Definitions

For the purpose of this Agreement, the following terms shall have the meanings set forth below:

1.2.1. Abandonment is defined as that portion of the permanent termination of service of an existing Facility as

authorized by City.

1.2.2. Betterment is defined as a Replacement Facility, or portion thereof, requested by the City and agreed to by RCC which will increase or upgrade the service capacity, capability, appearance, efficiency or function over that which was provided by the corresponding Conflicting Facility ("upgrade"). However, the following shall not be considered betterments:

(i) an upgrade which the parties mutually agree will be of direct benefit to the construction or operation of a Rail Project;

(ii) an upgrade resulting from construction in accordance with the applicable Design Standards as set forth in Section 2.4.1; and

(iii) measures to mitigate environmental impacts identified in the Rail Project's final Environmental Impact Report or Statement and which are hereafter mutually agreed to be a Rail Project responsibility.

The term Betterment shall include any new or upgraded facilities or portion thereof added by the RCC at the City's request for the purpose of the improvement of the City Facilities or services, and which are not otherwise excluded from the definition of Betterment as set forth above, and such Betterments shall be entirely financed at the expense of the City.

1.2.3. City is defined as the City of Los Angeles, California, its officers, departments, boards, employees, agents, contractors and subcontractors.

1.2.4. City Project is defined as a project, or portion thereof, which is an obligation of the City and which will be constructed jointly with RCC pursuant to Section 6.2 hereof.

1.2.5. City Representative is defined as that person designated by City, or his authorized representative, who has the power to conduct reviews and make approvals as required by this Agreement.

1.2.6. City Standards are defined as those written

standards which City customarily applies to projects financed primarily by City and which involve comparable Design or Rearrangement work, as the case may be.

1.2.7. Conflicting Facility is defined as an existing Facility that RCC determines is so situated as to require Rearrangement in order to construct or operate a Rail Project without adversely impacting the maintenance of that Facility.

1.2.8. Cost is defined as all direct and indirect costs as further defined in Section 8.1 of this Agreement.

1.2.9. Design is defined as that engineering and architectural work which results in the production of maps, plans, drawings, computer software, estimates and specifications which are necessary to the elimination of conflicts and effectuation and construction of Rearrangements, Replacement Facilities and Rail Projects under the terms of this Agreement.

1.2.10. Facility is defined as real or personal property located within or near to the route of a Rail Project, such as structures, improvements, and other properties under the ownership or operating jurisdiction of City and shall include, but not be limited to, public streets, highways, bridges and alleys, storm drains, sanitary sewers, parks, public landscaping and trees, traffic control devices, street lights, public police and fire alarm systems.

1.2.11. RCC Representative is defined as its President or his authorized representative, who has the power to conduct reviews, issue Work Orders and make approvals as required by this Agreement.

1.2.12. Rail Project is defined as those rail transitways of Commission and RCC, which are adopted for construction for the public transportation of passengers, and any portion or section thereof. "Rail Project" may refer to any one of the transitways, and any portion or section thereof, as the case may be.

1.2.13. Rearrangement is defined as the work of removal, replacement, alteration, reconstruction, support or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary.

1.2.14. Replacement Facility is defined as a Facility which may be constructed or provided under the terms of this Agreement as a consequence of the Rearrangement of a Conflicting Facility or portion thereof and which meets City's Standards as set forth herein.

1.2.15. Substitute Facility is defined as a Facility which is equal, in terms of service and/or capacity, to the corresponding Conflicting Facility that requires Rearrangements and which meets City Standards in effect when the corresponding Design Work Order is issued.

1.2.16. Temporary Facility is defined as a Facility constructed for the purpose of ensuring continued service while a Conflicting Facility undergoes its permanent Rearrangement.

1.2.17. Work Order is defined as that document which RCC shall issue to each appropriate City department or RCC contractor, to authorize performance of Design, Design review, inspection and Rearrangement work and supply of materials and equipment under the terms and conditions of this Agreement.

ARTICLE 2

DESIGN

2.1. Design Coordination

2.1.1. The RCC Representative and the City Representative shall establish general guidelines, working relationships, administrative policies, standards of Design and construction, approval procedures with respect to Design review, and coordination of construction, right-of-way acquisition and Rearrangement of Facilities pursuant to this Agreement in order to permit the timely construction and operation of Rail Projects. RCC

shall consult with the City Representative in establishing the schedule for Design of Rearrangements.

2.1.2. City shall inform RCC during Design, in writing, whether service must be maintained in any or all Facilities during Rearrangement, and of a proposed sequence of construction of Rearrangements.

2.1.3. City shall also provide all information available as to all other utility, cable, pipeline and other facilities (and their owners) which may be affected by Rearrangements. City and RCC shall take reasonable actions to verify such information. If such information is subsequently determined not to accurately reflect actual field conditions, through no fault of City, then RCC will be responsible for any necessary corrective work as a result thereof to conform the work to the applicable City Standards under Sec. 2.4. notwithstanding the City's earlier approval of the related Design.

2.2. Design Performed by RCC

When the parties mutually agree that Design for a specific Rearrangement shall be performed by RCC, the RCC shall issue Work Orders for City to review plans and specifications as required, and the following procedures shall govern:

2.2.1. Coordination of Design and the development of the Design plans and specifications shall be accomplished by the RCC Representative who shall confer from time to time with City Representative. As soon as possible during preliminary Design, but not later than the 85% Design stage, City shall inform RCC what Betterments, if any, City may desire.

2.2.2. During the process of Design, at the stages of completion set forth in the RCC schedule, RCC shall submit to City plans and specifications for the Rearrangements. Within the time set forth in the Design schedule, but in any event no later than thirty (30) calendar days of receipt, City shall review the plans and specifications and transmit its comments to RCC.

2.3. Design Performed by City

When RCC and City mutually agree that City shall perform Design of a specific Rearrangement, RCC shall issue a Work Order to City, upon receipt of which City shall proceed to perform the Design of Rearrangements, and the activities referred to in the following subsections:

2.3.1. Consistent with its staffing level and workload requirements, City shall perform its Design work to coincide closely with RCC's Design schedule and shall coordinate Design throughout with RCC as is necessary to develop plans satisfactory to both RCC and City for each Rearrangement.

2.3.2. During preliminary Design, but no later than the 85% Design stage, City shall provide to RCC a list of those Betterments to Replacement Facilities which City desires in a specific section of a Rail Project route so that the Design of said Betterments may be included in the overall Design of the Rail Project.

2.3.3. City shall submit a set of the completed Design plans and specifications, including City's estimate of the cost of construction (less applicable credits in accordance with Article 9) and City's estimate for the time needed to perform the required Rearrangement work, to RCC for its review and approval. Unless otherwise expressly provided herein, City may not change the plans prior to or during the progress of construction, except with prior written concurrence of RCC.

2.4. General Design Criteria

2.4.1. Upon commencement of Design of a specific Rearrangement, the City Standards then in effect shall be followed and any changes in City Standards occurring up to the point at which Design is sixty percent (60%) complete shall be incorporated in the product of Design, and any subsequent changes in City Standards up to approval of the Design by City shall also be incorporated provided such subsequent changes (i) do not require significant changes to the previously prepared Design product and

(ii) do not significantly increase the Cost of Design.

2.4.2. Except as provided above in Section 2.4.1., any increase in requirements of, or variance from, those City Standards as may be established by City and which the RCC agrees to, may be incorporated into the Design or construction of Rearrangements, and shall be considered a Betterment. The RCC shall receive a credit for this Betterment in accordance with Section 9.3 of this Agreement.

2.5. Specific Design Requirements

Rearrangement shall conform to the following Design requirements:

2.5.1. Surface Openings - To the extent practical RCC shall locate surface openings, if any, such as ventilation gratings, to cause the least effect on existing features of landscape and improvements and the least public disruption, and when practical they shall be located in Commission or RCC owned lands. In determining location of surface openings, health and safety concerns are paramount, however, consideration shall also be given to the effect of the location of openings on the realization of value from Commission owned or controlled real property. Placement of ventilation gratings in sidewalks will be avoided, if practical. Other openings, such as mechanical access openings, shall be permitted in sidewalks provided said openings are enclosed by a mutually acceptable method. Exact location and size of openings shall be mutually agreed upon by City and RCC.

2.5.2. Landscaping - Trees and landscaped areas under ownership or daily control of the City shall be preserved whenever practical. Trees in a Rail Project's construction area and which are to remain shall be adequately protected. Trees that must be removed due to Rearrangements shall be replaced in accordance with City Standards as set by the Bureau of Street Maintenance. Landscaped areas removed due to Rearrangements shall be restored to the original condition to the extent practicable. Preservation and/or replacement of trees and landscaping at parks affected by

Rail Projects shall be coordinated with the City's Dept. of Recreation and Parks.

2.5.3. Traffic Control Devices - As required, the RCC shall issue Work Orders to the City for removal and reinstallation of parking meters, traffic signals, and other traffic control devices, including posts, signs, pavement markings, and striping, in accordance with the RCC's construction schedule for a Rail Project.

2.5.4. Street Lighting - The RCC shall issue work orders for the Rearrangement of street lighting when required.

2.5.5. Private Projections in Public Ways - Upon a determination by City and RCC that any private projections in, over or under, streets, highways or other public ways must be removed, City shall take any and all reasonable action within its power to require the elimination of such projections prior to the scheduled start of Rail Project construction. If City is unable to effect the removal of such projections, or if it is determined that their removal is not the responsibility of the private owner, then RCC shall bear the cost of removal of said projections.

2.5.6. Other - Street, storm drain, sewer, and park reconstruction plans shall be shown on separate sheets.

2.6. Construction Staging Plans

The RCC, through its contractors, subcontractors or agents, shall develop construction staging plans. Construction staging plans shall provide, among other things, for the handling of vehicular and pedestrian traffic on streets adjacent to Rail Project construction with the construction phasing showing street closures, detours, warning devices and other pertinent information specified on the plan (worksite traffic control plans). Such plans shall incorporate actions to maintain access to businesses adjacent to the construction areas, and actions to ensure safe access and circulation for pedestrians and vehicular traffic as described in the worksite traffic control plans. The RCC will ensure that the plans complement elements of public awareness as well as mechanisms

to assist affected parties in complaint resolutions. Prior to implementation City will expedite the review and approval of worksite traffic control plans. To assist the RCC in coordination and the development of construction staging plans, the City will furnish to the RCC in writing during Design at the time required by the schedule the following information, or when mutually agreed the City shall prepare the worksite traffic control plans which will include:

2.6.1. All relevant traffic information, such as:

(a) The minimum number of lanes, and the minimum lane width, the time duration for peak traffic hours, non-peak traffic hours and over-night traffic hours for each involved street.

(b) Streets which may be closed completely during construction and the duration of the closure.

(c) Parking restrictions which will be imposed during the construction period.

2.6.2. Facilities information (other than streets):

(a) Facilities in which service must be maintained.

(b) Facilities in which service may be abandoned during construction.

(c) Proposed phasing or sequencing of construction of Facility Rearrangements.

(d) Rights-of-way which must be acquired for Replacement Facilities and Rearrangements.

2.7. Assistance by City

The City shall assist the RCC upon RCC's request, in the areas of fire safety, police security and transportation engineering, street lighting engineering, park engineering, storm drain and sanitation engineering, and in other areas when mutually agreed, and in such an event the RCC shall issue a Work Order to City to perform the activities referred to in the following subsections:

2.7.1. Fire Safety - Assistance in the design,

construction and operations planning of Rail Projects as it relates to fire prevention, fire suppression, and emergency preparedness with respect to fires or other major disasters. The assistance shall also include reviews for conformance of fire safety codes, standards and regulations. The Fire Department will be invited to participate as active members of RCC designated committees dealing with fire safety issues.

2.7.2. Police Security - Assistance in the design, construction and operations planning of Rail Projects as it relates to personal and property security, deterrence and detection of criminal activity and the apprehension of criminals. The assistance shall also include, if requested, participation as active members of RCC designated committees dealing with police security.

2.7.3. Transportation Engineering - Assistance in the design, construction and operations planning of Rail Projects as it relates to facilitating movement of automobiles, buses and pedestrians into and from the Projects. The assistance shall also include preparation of reports, traffic counts, and street geometric striping, worksite traffic control plans and traffic signal plans.

2.7.4. Street Lighting Engineering - Assistance in the design and construction of street lighting affected by a Rail Project.

2.7.5. Park Engineering - Assistance in the design, construction and operations planning of Rail Projects as it affects recreational areas, landscaping and lakes within City parks.

2.7.6. General Services - Assistance through the provision of general services support, including helicopter flight services, for the purposes of, among others, traffic monitoring, general aerial transportation surveillance, public affairs, media affairs and major incident response.

2.7.7. All Other Areas - Assistance in design, construction and operations of other City Facilities.

2.8. Coordination of New and Unrelated City Facilities

If City plans to construct new and unrelated facilities that would cross or otherwise occupy locations that might conflict with construction or operation of Rail Projects, City will coordinate the installation of the new facilities with RCC such that these facilities will not conflict with the Projects.

ARTICLE 3

AUTHORIZATIONS AND PROPERTY RIGHTS

3.1. Permits

3.1.1. Pursuant to State Law, the Commission and RCC are normally not subject to zoning or building or construction permitting ordinances of the City when constructing its Rail Projects on public right-of-way. However, a Special Permitting Process and Waiver of Certain Permit Fees (the form of which is attached hereto as Exhibit "A" and is agreed to by the parties) will be issued to cover certain work on the public right-of-way.

3.1.2. Prior to commencement of any phase of Rail Project construction that will affect private property within the corporate boundaries of the City, RCC or its contractor will take out any applicable required City permit not otherwise covered by the Special Permitting Process and Waiver of Certain Permit Fees, and give City advance written notice of commencement of such construction.

3.2. Work in Streets

3.2.1. The parties recognize that the City has the duties of supervising, maintaining and controlling streets, highways and other public ways within the boundaries of the City, and that Commission has a mandate under State law to timely construct Rail Projects. Accordingly, the RCC shall give City advance written notice where Rail Project construction requires work in public streets in the City and allow the City adequate review of relevant plans for such work.

3.2.2. Contractors of RCC performing work in City streets shall take all appropriate actions to ensure safe operations of the work and the continuance of service of City Facilities. Accordingly the City, after consultation with RCC, may require that if RCC contractors fail to perform such work as called for by the Design plans prepared hereunder and as may be required by any authorizations issued by City in connection with such work, i) upon notice from City the contractor shall promptly cure its failure, and ii) if the contractor still fails to cure, City may do so at RCC's expense.

3.3. Temporary and Permanent Street Closures

RCC and the City may agree that a street, highway, bridge or other public way shall be temporarily or permanently closed for the necessity and convenience of the Rail Projects. In such a case, the City, as requested by RCC shall initiate the appropriate notification and proceedings and establish the necessary conditions for the closures. However, this section does not preclude City from requesting that certain streets not be closed to accommodate "Special Events" utilizing those streets.

3.4. State Requirements

Nothing in this Agreement shall be deemed to abridge any applicable State law or State agency authority regarding permits, orders, licenses and like authorizations that may be required or available for Rearrangement work.

3.4.1. California Public Utilities Commission has jurisdiction over establishment of street and pedestrian crossings with RCC's rail transit tracks and their subsequent maintenance or alteration. Formal application for establishment or alteration of said crossings is required by the CPUC. Unless otherwise agreed, RCC may prepare, subject to concurrence by City, plans and applications therefor.

3.5. Grant of Rights

If, prior to RCC's scheduled date of commencement of work in a section or portion of a Rail Project, any Rearrangement

necessary to eliminate a conflict has not been completed, City shall grant RCC or its designee sufficient rights, if necessary, to allow RCC to proceed with the construction of that section or portion of the Project in accordance with the RCC's schedule; provided, however, that such grant does not unreasonably and adversely interfere with provision of City's services to the public; and provided further, that City is permitted under applicable law to grant such right.

3.6. Replacement Rights-of-Way

Replacement rights-of-way for the relocation of Conflicting Facilities shall be determined during Design and, if needed, may be acquired by Commission, RCC or City following approval by the parties of the location and type of such replacement rights-of-way. It is mutually understood and agreed, however, that, when reasonably possible, Rearrangements shall be located in existing public ways where the Facilities being replaced were in public ways. The required rights-of-way shall be acquired so as not to impair RCC's schedule. If City cannot acquire necessary private rights-of-way without out-of-pocket expense to itself, they shall be acquired by Commission or RCC. City shall convey to RCC or its designee, if permitted by applicable law and agreement, at no cost, all City real property interests being taken out of service by the Rearrangements, and for which replacement real property interests are provided. However, replacement rights-of-way involving real property controlled by the City's Parks and Recreation Department, if any, shall be handled by a separate instrument between said Department and the Commission.

3.7. City Licenses Within Project Right-of-Way

If a Rearrangement is made so that the Replacement Facility will be located within the Rail Project right-of-way, RCC shall provide City with a replacement license if necessary to accommodate the Replacement Facility, satisfactory to the City. It is hereby understood that in accepting such a replacement license and in releasing its existing rights, City shall acquire reasonable

rights to install, operate, maintain and remove Facilities within the replacement license.

ARTICLE 4
EFFECTING REARRANGEMENTS

4.1. RCC Performance of Rearrangement

Unless otherwise agreed, RCC shall perform all Rearrangements. RCC or its contractor shall commence and thereafter diligently prosecute such Rearrangement work to completion as authorized by Work Order and in conformance with Design plans and specifications prepared pursuant to Article 2, and such work shall coincide closely and be coordinated with RCC's construction schedule for the Rail Project, including the established schedule for construction of Rearrangements. If changes in the Design plans are necessary, RCC shall first submit such changes to City for review and approval before construction.

4.2. City Performance of Rearrangement

If the parties mutually agree, City shall perform construction of specific Rearrangements and the following provisions shall govern:

4.2.1. City shall commence and thereafter diligently prosecute such Rearrangement work to completion as authorized by Work Order and in conformance with Design plans and specifications prepared pursuant to Article 2. Rearrangement shall coincide closely and be coordinated with RCC's construction schedule for the Rail Project, including the schedule for construction of rearrangements of other utility cable and pipeline facilities in the same segment or portion of the Project. City shall coordinate its work with other facility owners and contractors performing work that may connect, complement or interfere with City's work hereunder or with its Facilities.

4.2.2. In the event that Temporary Facilities are necessary to effect a Rearrangement, City may use lands owned or

controlled by RCC for the purpose of erecting Temporary Facilities thereon, provided that RCC shall have approved in writing the location and duration of the Temporary Facilities. Upon completion of Replacement Facilities in their permanent locations, City shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless City and RCC mutually agree that City need not remove the Temporary Facilities.

4.2.3. City shall notify RCC at least five (5) days prior to commencing each Rearrangement so that RCC may make arrangements for such inspection and record keeping as it may desire.

4.3. Maintenance

City shall schedule, in concurrence with RCC, any routine maintenance of the Facilities so as not to unduly interfere with Rail Project construction or operations.

4.4. "As-Built" Drawings

RCC and City shall each maintain a set of "as-built" plans of Rearrangements of Facilities performed by RCC and City, respectively, during the progress of construction. After completion of the Rearrangement work, the party that performed the work shall furnish the other party with mylar film reproductions or other suitable reproducible "as-built" drawings showing all Replacement Facilities installed by the performing party. If the drawings submitted by either party are incomplete or nonconforming to agreed upon Standards, they will be returned to that party for correction at its expense.

4.5. Reproducible Contract Documents

RCC and City agree to provide the other with suitable reproducible copies of those final contract documents that they have prepared or caused to be prepared to govern the performance of a given Rearrangement by a contractor of either party so that each party may compile a complete set of contract documents. Each party shall prepare or cause to be prepared the contract documents for

which it is responsible in accordance with its drafting standards.

4.6. Underground Service Alert

Prior to any commencement of work by either party, Underground Service Alert shall be notified in accordance with State Law.

ARTICLE 5
INSPECTION

5.1. Inspection During Construction

All work performed by either party for construction of the Rail Projects shall be inspected by RCC. Rearrangement of Facilities and new Facilities to be maintained by City shall be inspected by City. Such inspection services shall be authorized by RCC under an appropriate Work Order. City shall provide inspectors to observe the Rearrangement of its Facilities at RCC's expense, so that upon completion of the Rearrangement, City will have a basis for the acceptance of the work. City's Inspector shall coordinate with the RCC Representative. The RCC Representative may inspect the Rearrangement of Facilities to ensure that the work has been performed in accordance with Designs approved by City. City's inspection shall also include planned field reviews for compliance of construction staging plans, including the worksite traffic control plans. Inspection will involve the verification of the safety and adequacy of vehicular and pedestrian access and circulation immediately adjacent to the construction area, and maintenance of appropriate access to directly affected business, as provided for in said plans. At such inspections, each party shall inform the other of any deficiencies or discrepancies in any work discovered in the course of such inspection.

5.2. Final Inspection

As soon as the work of any specific Rearrangement has been completed (and tested when called for by the approved Design), the party which performed the work shall notify the other party in writing that the Rearrangement is ready for final inspection. The

final inspection of any Rearrangement shall be attended by the RCC Representative, and the City Representative at RCC's expense. At such inspections, each party shall inform the other of any deficiencies or discrepancies in any work discovered in the course of the final inspection. The party which performed or which directed the performance of the work being inspected shall direct or perform, at its costs, as promptly as practical, any necessary corrective work required to make the Facility conform to the approved Design. A further inspection of both parties Representatives may take place after completion of any corrective work. Upon completion of the rearranged Facility, City shall furnish its acceptance thereof in writing and assume full responsibility for the Facility.

5.3. Use of Improvements During Construction

The City reserves the right to take over and utilize all or any part of any completed Facility ("Utilization"), unless such Utilization would interfere with Rail Project construction. RCC must be given reasonable advance notice thereof. Such Utilization will be deemed acceptance of that Facility or part thereof, and any subsequent damage thereto shall be City's responsibility unless caused by RCC's or its contractors' negligent work. Thereafter RCC will not be required to reclean such portions of the Facility, except for cleanup made necessary by Rail Project construction activities.

ARTICLE 6

JOINT CONSTRUCTION WORK BY CITY AND RCC

6.1. Design and Construction By City

In construction of public improvements by the City, the RCC and the City may agree that the City shall design and construct or cause to be constructed certain portions of the Rail Project. In such event, the approval of such construction shall be as follows:

6.1.1. The RCC shall issue a Work Order to the City for the Design of such work.

6.1.2. Upon completion of preliminary Design, the City shall provide the RCC with a preliminary estimate of Cost of the work to be paid by the RCC, together with preliminary plans and specifications.

6.1.3. Upon approval of the preliminary Design, the City shall complete the Design and advertise the contract for bids. The City shall then inform the RCC of the RCC's share of the Cost based upon the winning bidder's unit prices, and shall furnish the RCC with copies of the extract of bids, together with sets of the final plans and specifications. The RCC shall have the right to review and approve the bids. The RCC reserves the right to reject all bids, but in such cases the RCC shall reimburse the City for the Design and advertising Costs allocable to the Rail Project.

6.1.4. After review and approval of the bids by the RCC, the RCC shall issue a Work Order to the City. City shall notify the RCC of the amount of advance monies needed to award the contract. RCC shall remit advance monies prior to the award of the contract. The City shall thereafter obtain the RCC's approval for modifications to the contract which will affect the Rail Project and, in any event, shall inform the RCC promptly when the City has reason to believe that the Cost estimate is likely to be exceeded, and shall obtain RCC approval of any such increase.

6.1.5. Should the City and RCC agree that work can be performed by City forces, the Cost estimate to perform the work and the RCC's share thereof shall be furnished to the RCC. Upon approval of the Cost estimate and Design, the RCC shall issue a Work Order to City. City shall obtain RCC's prior written approval for any changes from the approved Design or increase to the approved Cost estimate.

6.1.6. Inspection services on the work performed pursuant to this Section 6.1 shall be reimbursable in accordance with the procedures set forth in Article 5.

6.1.7. The City shall furnish the RCC a monthly progress and accounting report for the work performed pursuant to this Section 6.1 in a mutually agreeable format. In addition, upon request by RCC, City shall furnish along with the monthly progress, an invoice and request for payment prepared on the basis of actual work logs maintained by the City.

6.2. Design and Construction by RCC

City Projects, or portions thereof, which have been authorized by City and for which the preliminary Design has been completed may, by mutual agreement, be constructed by the RCC. In such event, the following provisions will govern:

6.2.1. City shall initiate a request to the RCC for the incorporation of the City Project into the RCC's final Design.

6.2.2. After its review and approval of the request, the RCC will issue a Work Order to incorporate the Design of the City Project. The City shall be obligated to reimburse the RCC for the increase in Design Costs allocable to the City Project.

6.2.3. Upon completion of preliminary Design by the RCC, the RCC shall provide the City with a preliminary estimate of Costs of the work to be paid by the City, together with the preliminary plans and specifications.

6.2.4. Upon approval of the preliminary plans and Cost estimate by the City, the RCC shall complete the design and advertise the contract for bids. The RCC shall then inform the City of the City's share of the Cost based upon the winning bidder's unit prices, and shall furnish the City with the extract of bids, together with final plans and specifications. The City shall have the right to review the bids. The City reserves the right to reject all bids, but in such cases, the City shall reimburse the RCC for Design Costs allocable to the City Project.

6.2.5. After review and approval of the bids by the City, funds of the City shall be obligated. The RCC shall thereafter obtain the City's approval for modifications to the contract which will affect the City Project and, in any event,

shall inform the City promptly when the RCC is aware that the Cost estimate is likely to be exceeded.

6.2.6. The City shall perform inspection services on the City Project at its own expense. RCC Representative may accompany the City inspector.

6.2.7. The RCC shall furnish the City a monthly construction progress report for each City Project it constructs pursuant to this Section 6.2.

ARTICLE 7

DISPOSITION OF SALVAGED MATERIALS

7.1. Salvage

The parties may salvage certain materials belonging to City during the course of Rearrangement. If they are to be reused, they shall be stored until such time as the progress of work allows the reinstallation of such materials. Materials which are not to be reused in the Rearrangement but which City desires to reclaim shall be returned by RCC to a location proximate to the salvage site and suitable to City. If materials removed by RCC are not reusable and are not desired by City, such materials shall become the property of RCC, unless otherwise mutually agreed.

7.2. Salvage Credits

RCC shall receive a credit for salvage of such materials described herein that are used or reclaimed by City as provided in Article 9.

ARTICLE 8

REIMBURSEMENTS

8.1 Reimbursement to City

The issuance of a Work Order shall obligate RCC to reimburse City in the manner provided by this Agreement for the reasonable direct and indirect costs necessarily incurred by City for activities or work performed or materials acquired in

accordance with the terms of this Agreement, less credits to the RCC as provided in Article 9. Direct costs shall include allowable direct labor costs spent specifically for work performed under this Agreement. Indirect costs shall be computed based upon the Indirect Cost Rates approved annually for the City by its cognizant agency (currently the United States Department of Labor pursuant to Circular A-87 of the Office of Management and Budget and Publication OASC-10), for allocation to Federally funded or State funded contracts. Unless the Internal Revenue Service and the California Public Utilities Commission issue regulations or rulings to the contrary, reimbursable costs will not include taxes purportedly arising or resulting from the RCC's payments to City under this Agreement.

8.2. Reimbursement to RCC

City shall reimburse RCC by way of credits, as defined and in those cases called by Article 9.

8.3. Reimbursement for Abandoned Facility

In those cases in which RCC and City agree that the construction of a Rail Project will eliminate the service need for a specific Conflicting Facility, RCC shall not be required to replace or compensate City for the Conflicting Facility, in which case RCC shall compensate City only for necessary Costs incurred in abandoning the Conflicting Facility.

ARTICLE 9

CREDITS

9.1. Credits to RCC

RCC shall receive a credit from City against work performed under this Agreement for salvage, Betterments, City Projects and expired service life. The amount of credits shall be determined by mutual agreement of the parties based upon applicable books, records, documents and other data of City. To assist in the determination of credits due RCC under this Agreement, RCC and City

may conduct an inspection survey of each Conflicting Facility during the Design stage. Pursuant to a Work Order, City shall provide RCC with drawings, plans or other records necessary to conduct such survey. The survey shall describe the physical attributes, date of construction or installation and present condition of each conflicting Facility; shall report the expected service life of each Conflicting Facility as derived from City's records; and shall state whether the materials contained in each Facility are reusable or salvageable.

9.2. Credit for Salvage

Credit for salvage shall be allowed for items of materials and equipment recovered from existing Facilities in the performance of work specified herein. The amount of salvage credit, if any, shall equal the value of like or similar materials and will be determined by mutual agreement.

9.3. Credit for Betterments

The amount of a Betterment credit shall be the estimated costs of the Replacement Facility, minus the estimated costs of the Substitute Facility; and said estimated costs shall be based on the unit price schedules used by City in its usual operations and agreed to by the parties. The amount of Betterment credit, if any, shall be determined by the parties during the Design process.

9.4. Credit for Expired Service Life

RCC shall receive a credit for the value of the expired service life of the Conflicting Facility being replaced if the Replacement Facility will have an expected period of useful service greater than the period which the existing Facility would have had, had it remained in service and the Rearrangement not been made. Such credit for the value of expired service life will be that proportion of the cost of the Replacement Facility which equals the age for the Conflicting Facility divided by the estimated overall service life of the Conflicting Facility. In no instance, however, shall the credit for accumulated depreciation exceed the original

cost of the Facility being replaced. The amount of credit shall be agreed upon by City and RCC in the appropriate Work Order. The RCC shall not receive a credit for expired service life for street pavements, curbs, gutters, sidewalks, traffic signals, traffic control devices, street lights, sewers, and storm drain facilities.

9.5. Credit for City Projects

The amount of credit due the RCC for design and construction of City Projects shall be determined in accordance with Section 6.2 of the Agreement.

ARTICLE 10

INDEMNITY AND WARRANTY

10.1. Indemnity

10.1.1. RCC agrees to indemnify, defend and save harmless City, its officers, agents and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, losses, suits and actions of whatever kind, and for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with RCC's performance hereunder.

10.1.2. City agrees to indemnify, defend and save harmless Commission, RCC, their members, agents, officers and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, losses, suits and actions of whatever kind, for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury or property damage arising from or connected with City's performance hereunder.

10.1.3. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by

Section 895 of said Code, the parties hereto, as between themselves pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such party would be responsible under Sections 10.1.1 and 10.1.2 hereof. The provisions of Section 2778 of the California Civil Code are part hereof as if fully set forth herein.

10.2. Warranty

In lieu of providing a bond normally associated with the permit authority of the City relating to excavations in, or adjacent to the public street, the RCC warrants that any work affecting the structural stability of the street shall be free from defect. Said warranty is for a period of two (2) years after completion of the work. The RCC, at its sole expense, shall remedy any damage to public facilities to the extent caused by a failure of such structural support installed by the RCC during the warranty period. Said remedy will be commenced, and completed, if feasible, within 10 days of notice by City to RCC.

10.3. Contractor Insurance

Any design or construction contract entered into by RCC or City, as contemplated by Article 6 hereof, shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to the policy of insurance which names the City, RCC and Commission as additional insureds.

ARTICLE 11

WORK ORDERS AND BILLINGS

11.1. Work Performed by City

All work to be performed by City under this Agreement will coincide closely with RCC's Design and construction schedule

for the Rail Project. Consistent with its own staffing and workload requirements, City shall allocate sufficient staff and other resources necessary to provide the level of service required to meet said schedules. To assist City in estimating the level of service to be provided for a Project, RCC may submit to City a work plan setting forth each item of work, with corresponding start and finish dates, that RCC anticipates it will request the City to perform.

11.2. Work Orders

RCC shall issue Work Orders to City to authorize the performance of all work or the purchase of all materials and equipment required under the terms and conditions of this Agreement. City or City's contractor and subcontractor may perform any work so authorized. Contractors engaged by City to perform work covered by this Agreement shall comply with all applicable labor and other laws and agreement. City shall cooperate with RCC and take such actions as the RCC may reasonably request to ensure such compliance. Each Work Order shall specify the work to be performed and any materials or equipment to be acquired, the maximum amount of money which City will be reimbursed therefor, and the estimated starting and finishing dates for work so authorized. Should City refuse or be unable to perform the work as authorized in a Work Order, RCC may perform said work and City shall assist RCC as provided in this Agreement.

11.3. Work Order Changes

11.3.1. Any proposed changes in a Work Order issued under its Agreement shall be submitted in writing to RCC for its prior approval. If RCC fails to agree in writing to a requested change in a reasonable time, the change shall be deemed rejected. However, any proposed change occasioned by emergency field construction difficulties may be submitted to RCC orally or by telephone, and shall be confirmed later in writing by City. In such event, RCC agrees to act on such request as promptly as possible, and its resident engineer may convey RCC's decision

orally, to be confirmed later in writing.

11.3.2. RCC may terminate any Work Order at any time at its sole discretion, but RCC will reimburse City in accordance with this Agreement for Costs, if any, already incurred by City. City agrees to notify RCC if at any time City has reason to believe that the Costs which it expects to incur under any Work Order in the next 60 days, when added to all Costs previously incurred, will exceed 75% of the total Cost specified in the Work Order, or if at any time City has reason to believe that the total Cost under said Work Order will be in excess of ten percent (10%) greater or less than previously estimated Cost or when the estimated finishing date will be later than the date in the Work Order. City will request written revisions of Work Orders in the event of anticipated cost overruns or completion delays. Without RCC's approval, City will not be reimbursed for Costs expended in excess of maximum amounts stated in a Work Order.

11.4. Procedures for City Billings to RCC

The parties agree that the following procedures shall be observed for City's submission to RCC of monthly billings, on a progress basis, for work performed by City under a specific Work Order. City's billings shall begin as soon as practicable following the commencement of a specific Rearrangement or other work under a given Work Order, and shall follow City's standard billing procedures. Invoices and other data to document costs incurred, if available, shall be provided to RCC upon request. Each billing shall be noted as either "progress" or "final" and shall be addressed to the RCC Representative. The final billing, with a notation that all work covered by a given Work Order has been performed, shall be submitted to RCC as soon as practicable following the completion of the Rearrangement, shall recapitulate prior progress billings, and shall show inclusive dates upon which work billed therein was performed.

11.5. Procedures for RCC Billings to City

In those cases in which the RCC performs Rearrangement,

City Project or other work which is reimbursable to the RCC under the terms of this Agreement, the RCC shall submit to City monthly progress statements indicating actual work performed during the billing period and the direct and indirect Costs thereof. RCC billing shall begin as soon as practicable following the commencement of a specific Rearrangement or other work. Each billing shall be noted as either progress or final. The final billing, with a notation that all work covered thereby has been performed, shall be submitted to City as soon as practicable following the completion of said Rearrangement or other work.

11.6. Payment of Billings

RCC shall pay each billing presented by City under the foregoing procedures within sixty (60) days of receipt thereof; provided, however, that such payments shall be conditional, subject to post-audit adjustments, and that RCC may withhold credit amounts due RCC if City has not posted such credits within sixty (60) days after submittal of requests for same by RCC.

11.7. Audit and Inspection

Each party shall have reasonable rights to inspect and audit the other's records relating to its performance hereunder from the date hereof through and until expiration of three (3) years after completion of all Rearrangements.

ARTICLE 12

RESOLUTION OF DISPUTES

12.1. Attempts to Resolve

In the event of a claim or dispute arising out of or relating to this Agreement, both parties shall make good faith efforts to resolve the claim or dispute through negotiation.

12.2. Arbitration - No Work Stoppage

12.2.1. Failing a resolution through these good faith efforts, in the absence of good faith efforts to resolve, or in the event the parties are unable to agree upon the terms of such

further agreements as are herein required to be executed by the parties, either party may serve upon the other a written demand for arbitration. The parties shall, within ten (10) days thereafter, or within such extended period as they shall agree to in writing, attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each party, prior to the expiration of the ten-day or agreed extended period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator ("neutral arbitrator") to form a three-member panel. If either party fails to designate its arbitrator within the ten (10) days after the date of delivery of the demand for arbitration or the agreed extended period, or if the two designated arbitrators are unable to select a neutral arbitrator within five (5) days after their appointment, a neutral arbitrator shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure who shall hear the matter as the sole arbitrator.

12.2.2. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable, but only with respect to those issues not involving work stoppage. A hearing date shall be set as promptly as possible following selection of the arbitrator(s). The arbitrator(s) award shall follow promptly the hearing's conclusion, shall be supported by law and substantial evidence and the issuance of written findings of fact and conclusions of law. The making of an award failing to comply with the requirements of the immediately preceding sentence shall be deemed to be in excess of the arbitrator(s)' powers and the court shall vacate the award if after review it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

12.3. Arbitration - Work Stoppage

12.3.1. In no event shall work be stopped in the event of a claim or dispute, except for reasons of public health or safety or where it is absolutely necessary to first resolve the

dispute in order to be able to continue work. In the event that work is stopped, the provisions of this Section 12.3 shall apply. Upon stoppage of work, either party may serve upon the other a written demand for arbitration. A neutral arbitrator shall be immediately designated pursuant to Section 1281.6 of the California Code of Civil Procedure.

12.3.2. No neutral arbitrator shall be selected who is unable to hear the dispute and render a decision within five (5) days after being selected. Notwithstanding Sections 1282.2(b) and 1286.2(e) of the California Code of Civil Procedure (regarding postponement of the hearing), where work is stopped, the neutral arbitrator may not postpone nor adjourn the hearing except upon the stipulation of all parties to the arbitration. The arbitration may proceed in the absence of a party who, after due notice, fails to appear. In addition to all other issues, the neutral arbitrator shall also determine whether it was absolutely necessary to stop and await dispute resolution in order to continue the work, and if it was not so necessary the other party shall be entitled to damages arising out of such work stoppage, which damages shall also be determined by the neutral arbitrator. The provisions set forth in Section 12.2.2 hereof as to the making of the award shall also apply.

12.4. Impartiality of Arbitrator

No person shall act as neutral arbitrator who in any way has any material financial or personal interest in the results of the arbitration. Failure to disclose any such interest or relation shall be grounds for vacating the award.

12.5 Compensation of Arbitrator

Each party shall pay the expenses and fees of the arbitrator it selects. The expenses and fees of the neutral arbitrator shall be paid in accordance with the provisions of Section 1284.2 of the California Code of Civil Procedure.

12.6. Other Provisions

Except as is otherwise provided herein, any arbitration under this Article 12 shall be governed by the California Arbitration Act.

12.7. Incorporation in Subcontracts

In order to ensure the timely completion of Rearrangements, City shall include the foregoing or equivalent provisions in its agreements with contractors, material suppliers, equipment renters and others who are involved in effecting Rearrangements.

ARTICLE 13

FEDERAL REQUIREMENTS

This Agreement, as to certain Rail Projects, may be subject to a financial assistance agreement with the U.S. Department of Transportation, Urban Mass Transportation Administration, and as such is subject to the following terms and conditions as to such Rail Projects only:

13.1. Audit and Inspection

City shall permit the authorized representatives of the RCC, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all records relating to the City and its subcontractors' performance under the contract from date of Agreement through and until expiration of three years after completion of the Rearrangement with which Federal funds are used.

13.2. Interest of Members of Congress

No members of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

13.3. Prohibited Interests

No member, officer or employee of the RCC or Commission, or of a local public body, during his tenure or for one

year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. To the RCC's and City's knowledge, no board member, officer or employee of the RCC or Commission has any interest, whether contractual, noncontractual, financial or otherwise in this transaction, or in the business of the City; and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party, even if such interest would not be considered a conflict under Article 4 of Division 4 (commencing with Section 1090) or Division 4.5 (commencing with Section 3690) of the Government Code of the State of California.

13.4. Equal Employment Opportunity

In connection with the execution of the Agreement, City shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The City shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

13.5. Minority Business Enterprise

In connection with the performance of the Agreement, the City will cooperate with the RCC and Commission in meeting commitments and goals with regard to the maximum utilization of minority business enterprises, and will use its best efforts to ensure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

"Minority Business Enterprise" or "MBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act

and implementing regulations, which is owned and controlled by one or more minorities or women.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

- (a) Black (a person having origins in any of the black racial groups of Africa).
- (b) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race).
- (c) Asian American (a person having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands).
- (d) American Indian and Alaskan Native (a person having origins in any of the original people of North America).
- (e) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Act as amended (15 U.S.C. 637(a)).

"Owned and Controlled" means a business:

- (a) Which is at least 51 percent owned by one or more minorities or women or, in the case of publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities or women; and
- (b) Whose management and daily business operations are controlled by one or more such individuals.

13.6. Ownership of Reports and Documents

Originals of all documents pertaining to the work performed under this Agreement shall become the property of the City. Copies may be made for the RCC records.

13.7. Maintenance of Records

The City agrees to keep and maintain records showing actual time devoted and all costs incurred in the performance of a Rearrangement under the Agreement for a period of three (3) years after the accepted completion of the Rearrangement.

13.8. Assignment

Neither party shall assign its interest in this Agreement without prior consent of the other party.

13.9. Prior Approval

This Agreement, subcontracts, and all amendments thereto, are subject to U.S. Department of Transportation, Urban Mass Transportation Administration review and approval.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1. Approvals; Further Documents

14.1.1. Where this Agreement requires approval, consent, permission, satisfaction, agreement or authorization by either party, such approval, consent, permission, satisfaction, agreement or authorization shall not be unreasonably withheld.

14.1.2. The parties agree to execute such further documents, agreements, instruments and notices as may be necessary or appropriate to effectuate the transactions contemplated by this Agreement.

14.2. Notices

14.2.1. Any notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or five (5) days after deposit in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City:

City of Los Angeles
Department of Transportation
200 N. Spring Street., Room 1200
Los Angeles, California 90012
Attention: General Manager
To LACTC:

With a copy to RCC:

Los Angeles County
Transportation Commission
818 West 7th Street
Suite 1100
Los Angeles, California 90017

Rail Construction Corporation
818 West 7th Street
Suite 500
Los Angeles, California 90017

Attention: Executive Director

Attention: President

14.2.2. The parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement, but each alternate procedure shall not be described in writing and signed by the RCC Representative and the City Representative.

14.3. Assignment; Binding Effect

This Agreement is assignable and shall bind and inure to the benefit of the respective successors and permitted assigns of the parties.

14.4. Waiver

The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

14.5. Entire Agreement; Modification

This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. This Agreement may not be amended, modified, superseded or canceled, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the party against which such amendment, modification, supesedure, cancellation or waiver is to be charged.

14.6. Time of Essence

In accomplishing all work required under this Agreement, time is of the essence.

14.7. Legal Rights

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California. The rights and remedies of the RCC and City for default in performance under this Agreement or any Work Order are in addition to any other rights or remedies provided by law.

14.8. Severability

In the event that any portion hereof is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

14.9. Gender and Tense

As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall each be deemed to include the other or others whenever the context so indicates.

14.10. Headings

The headings which appear at the commencement of each section are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between any heading and the section itself, the section itself and not the heading shall control as to construction.

14.11. Incorporation of Exhibits

Every exhibit to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

14.12. Counterpart Originals

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

14.13. Force Majeure

Neither party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances or unusually severe weather conditions.

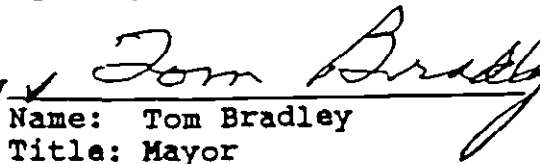
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

"CITY"

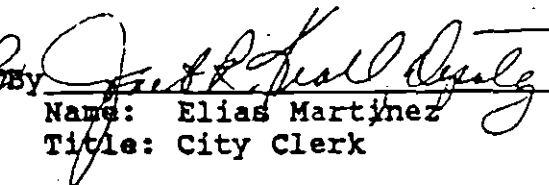
ATTEST:

CITY OF LOS ANGELES

By


Name: Tom Bradley
Title: Mayor

By


Name: Elias Martinez
Title: City Clerk

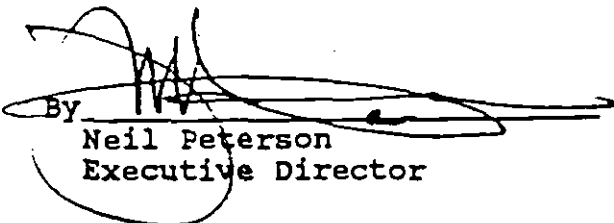


"RCC"

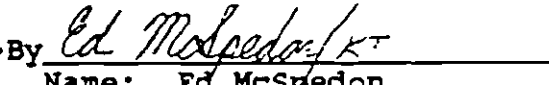
LOS ANGELES COUNTY
TRANSPORTATION COMMISSION

ATTEST:

By


Name: Neil Peterson
Title: Executive Director

By

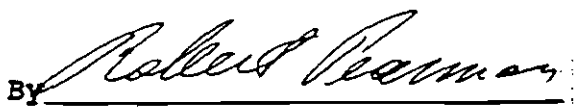

Name: Ed McSpedon
Title: President, RCC

APPROVED AS TO FORM AND LEGALITY:

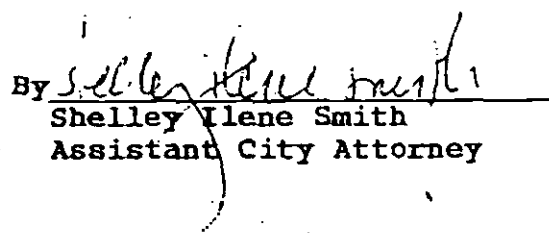
ROBINSON & PEARMAN
Special Counsel to LACTC/RCC

JAMES K. HAHN
City Attorney

By


Robert C. Pearman, Jr.

By


Shelley Ylene Smith
Assistant City Attorney

RIDER TO COOPERATIVE AGREEMENT

Restrictions on Lobbying

After due inquiry the undersigned certifies on behalf of City of Los Angeles, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of any agency, as defined in Title 31 U.S.C. Section 1352 (h) (2) (hereinafter "agency"), a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, Disclosure of Lobbying Activities, in accordance with its instructions.

(3) City shall require that the language in the preceding two paragraphs shall be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which the LACTC/RCC materially relied in the award of this contract.

"City of Los Angeles"

By: _____

The within instrument approved by
the Council of the City of Los
Angeles at its meeting of

JUN 18 1991

ELIAS MARTINEZ City Clerk

By *[Signature]*

Deputy



CF 91-0921



Jerry M. Givens
Assistant Executive Director

ML-SS-BIC
Exhibit A (?)

September 30, 1991

Ref: EX210

Mr. James M. Okazaki
Rail Transit Programs Division
Department of Transportation
City of Los Angeles
Room 1200, City Hall
Los Angeles, CA 90012

MASTER COOPERATIVE AGREEMENT AND
SPECIAL PERMITTING PROCESS DOCUMENTS

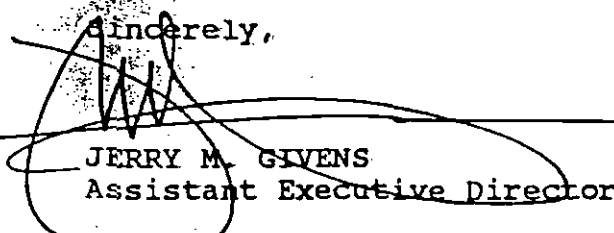
Dear Mr. Okazaki:

The Master Cooperative Agreement was approved by the Commission on September 25, 1991 and signed on September 26, 1991. Pursuant to your request, we are returning with this letter, two executed originals of the Master Cooperative Agreement for processing by your office.

As recommended in the Special Permitting Process Document, with the execution of the Master Cooperative Agreement, the terms and conditions of the Special Permitting Process are now effective.

If you have any questions, please contact Ken Takahashi at (213) 244-6426.

Sincerely,



JERRY M. GIVENS
Assistant Executive Director

Attachments

c: E. McSpedon
K. Jones Irish
E. Richardson
K. Takahashi
Project Managers
RMC/Chron



Los Angeles County
Transportation
Commission

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BUREAU OF STREET LIGHTING
BUREAU OF STREET MAINTENANCE
JOINT REPORT NO. 1

July 3, 1991

CD #'s 1, 4, 10, and 13

L.A. METRO RAIL PROJECT PHASE II - SPECIAL PERMITTING PROCESS AND
WAIVER OF CERTAIN PERMIT FEES FOR CONSTRUCTION OF ALL METRO RAIL
PHASE II CONTRACTS WITHIN THE PUBLIC RIGHTS-OF-WAY W.O. EXX01001

RECOMMENDATIONS

1. Authorize the Rail Construction Corporation (RCC), a wholly owned subsidiary of the Los Angeles County Transportation Commission (LACTC), to construct all facilities called for by Metro Rail Phase II unit contracts within the public rights-of-way, after the contract documents that include the rearrangement of City facilities, or involve construction within the public rights-of-way, including plans, have been reviewed and approved in writing by the City. Waive certain permit fees and restrictions listed in this report subject to the conditions contained herein.
2. Adopt this "Special Permitting Process and Waiver of Certain Permit Fees" subject to the condition that it shall be effective concurrent with the execution of the proposed Master Cooperative Agreement between the City and LACTC.
3. Forward a copy of this report to the City Council for their information.

CONDITIONS

- I. RCC shall be responsible for the rearrangement of all sewer, street, storm drain, street lighting, traffic signal, striping, signing and utility relocation/rearrangement work within Metro Rail Phase II Project unit contract areas. RCC shall provide "AS-BUILT" drawings within 60 days of the completion of the work on either temporary or permanent facilities to the Bureau of Engineering, Bureau of Sanitation (sewers and storm drains only), Bureau of Street Lighting, and Los Angeles Department of Transportation (LADOT). These "AS-BUILT" plans shall be prepared in a format jointly acceptable to the Bureau of Engineering, Bureau of Sanitation (sewers and storm drains only), Bureau of Street Lighting, LADOT, and RCC. On street lighting work which changes an existing street lighting circuit, RCC shall provide "AS-BUILT" drawings within 10 days of a circuit change.

2. RCC shall include all the conditions listed in this report as part of the specifications for all Metro Rail Projects that will require work within the public right-of-way.
3. RCC and the Bureau of Engineering mutually agree to the standards and criteria established with respect to shoring and lateral support plans. RCC shall require its contractors to design all shoring and lateral support on public rights-of-way in accordance with these mutually agreed design standards and criteria. RCC shall submit all shoring and lateral support details, including soil reports, engineering calculations, and decking support plans to the Bureau of Engineering for review and approval prior to construction per subsection 62.02(c) of the Municipal Code. The Bureau will review the submittals within ten (10) working days and will coordinate with the Department of Building and Safety in their review of these submittals with respect to the lateral support of adjacent private property.
4. RCC shall ensure that temporary decking for cut and cover construction shall be designed for the maximum loads anticipated for that location but not less than an AASHTO HS 20-44 loading. The decking surface shall have a minimum dynamic friction factor of 0.3 for skid resistance and static friction factor of 0.5 for slip resistance for wet and dry conditions. The decking surface conditions shall be installed and maintained to the satisfaction of LADOT General Manager and the City Engineer.
5. RCC shall require its contractors to submit their haul route plans to the Bureau of Engineering for written approval. Such submittal shall clearly indicate the proposed truck staging area and shall be submitted not less than 30 days prior to the actual date of operation. LADOT shall coordinate with the Construction Traffic Management Committee having jurisdiction, by City of Los Angeles Ordinance, of the area affected or with the Street Use Inspection Division of the Bureau of Street Maintenance and the Bureau of Engineering for areas outside the jurisdiction of any Construction Traffic Management Committee.
6. RCC shall require its contractors to provide ten (10) calendar days notification to LADOT before implementing any street, traffic lane or sidewalk closures which are pre-approved on the construction drawings. Additional street closures shall be consistent and compatible with the Worksite Traffic Control Plans (WTCP), as approved by LADOT prior to implementation.

RCC shall require that its contractors be responsible for installation, maintenance and removal of all traffic control devices required in the approved WTCP.

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7. RCC shall require its contractors to minimize City street closures. RCC shall not allow any public rights-of-way authorized for closure to be used by its employees or contractors for parking vehicles unless otherwise authorized in writing by the Bureau of Engineering and LADOT.
8. RCC shall require its contractors to continuously provide safe and adequate pedestrian access and circulation throughout the construction areas. Pedestrian crossings for streets at cut and cover construction areas shall be provided with adequate signage to direct pedestrian traffic through the construction areas. The minimum walkway width shall be 10 feet to accommodate the physically handicapped unless otherwise approved by LADOT in the WTCP. RCC shall maintain pedestrian access to all businesses adjacent to the construction area.
9. RCC and its contractors shall take necessary measures to continuously control dust nuisance, according to Air Quality Management District Standards and Standard Specifications for Public Works Construction Sec. 200-2.5.4.
10. RCC shall ensure that any water discharged into the City's storm drain system as a result of any construction operation shall be free from contamination and complies with any permit conditions established by the Bureau of Sanitation.
11. RCC shall ensure that its contractors obtain any necessary Storm Drain Connection and Sewer Connection Permits from the Bureau of Engineering, Building Material Permits and Overload Permits from the Bureau of Street Maintenance, and Industrial Waste Permits from the Bureau of Sanitation. RCC shall also ensure that any and all other permits that may be required by other City Departments shall be obtained.
12. RCC shall assist the City Engineer in obtaining requests for Revocable Permits from property owners for basements, service elevators, and other encroachments in the public rights-of-way within the limits of Metro Rail construction.
13. RCC and its contractors shall notify Underground Service Alert, Telephone 1(800) 422-4133, not less than two(2) working days or not more than ten(10) working days before each excavation.

- . RCC shall ensure that contractors and utility companies constructing facility rearrangements, after the date of the Notice to Proceed, conform to street closure requirements, traffic lane requirements, and Worksite Traffic Control Plans, if any, as approved in writing by LADOT's General Manager, or prepare such plans to the satisfaction of the LADOT General Manager when requested.
- 15. RCC shall obtain written approval from LADOT's General Manager for any work restricting traffic flow or affecting traffic facilities in any way by submitting a Worksite Traffic Control Plan (WTCP) and circulation plan, unless a Worksite Traffic Control Plan or traffic lane requirements has been approved previously in writing by LADOT's General Manager. WTCP shall be prepared in accordance with standards specified by LADOT.
- 16. All work for restoration or relocation/rearrangement of utility company facilities within the public rights-of-way, facilities owned by the City, and facilities to be maintained by the City shall be subject to inspection and approval by the City. City Inspection shall be arranged by calling the Bureau of Contract Administration dispatcher before noon on the workday prior to the need for inspection at (213) 485-3002. The City Inspector shall notify RCC and its contractors of the critical "hold" points at which time the presence of the inspector will be required before proceeding with the work.
- 17. RCC, upon completion of the work in condition 16, shall arrange for final inspection by notifying the Inspector of Public Works and the City Engineer. Thereafter, final inspection shall be made as soon as possible. If the work is found to be in compliance with the approved plans and specifications, the City shall furnish its acceptance in writing. However, if corrective work is found to be necessary to conform with the plans and specifications, a final correction list will be issued and RCC shall direct or perform such work at its own expense and further inspection may be required for the corrective work.
- 18. RCC shall require its contractors to provide a qualified stand-by electrical contractor to undertake street lighting, or traffic signal repairs and notify the Bureau of Contract Administration at (213) 485-3002, and either the Bureau of Street Lighting Field Operations Division at (213) 485-3491 or LADOT Rail Transit Division at (213) 485-2610, whenever the stand-by contractor is called upon to do repair work.
- 19. RCC shall provide a nightly patrol and daily written report acceptable to the Bureau of Street Lighting, of all streetlights out within one block surrounding the transit

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construction sites. RCC shall require its contractors to immediately investigate all streetlight outages reported. RCC shall require the contractors to repair outages related to the rail contracts within 48 hours, and advise the Bureau of Street Lighting in writing of the results.

Also, arrangements shall be made between RCC and the Bureau of Street Lighting to ensure that during the term of this contract only the RCC contractor shall perform repair work on any street lighting circuit affected by the construction, for safety reasons.

20. RCC shall require its contractors to install temporary street lighting from "shop drawings" approved by the Director, Bureau of Street Lighting, prior to removing any permanent electrolier lighting from service on streets open to public use.
21. RCC shall require contractors to submit to the Bureau of Engineering for approval, shop drawings, material test results, and structural design calculations (or certified load tests) of gratings and hatch covers to be installed in public rights-of-way.
22. RCC shall require its contractors to replace any trees removed or damaged beyond recovery. The Street Tree Division of the Bureau of Street Maintenance will specify the species and sizes of the replacement trees.
23. RCC shall require its contractors to make a "Good Faith Effort" to restrict all construction activity to the duration and periods specified in Worksite Traffic Control Plans approved by LADOT. The contractor shall submit an official request through the RCC, detailing any need for extending work beyond the specified durations to LADOT for approval.
24. RCC shall require its contractors to provide, upon request from the City, appropriate restoration and/or clean-up of City streets within the Metro Rail work area to accommodate annual or special events that require the use of those streets.

TRANSMITTALS

1. SCRTD letter dated April 14, 1989.
2. Metro Rail Phase II contract description and contract numbers.
3. Board Report on L.A. Metro Rail - Special Permitting Process.
4. Phase II LPA - station location plans.
5. RCC Phase II design and construction schedule (preliminary).

DISCUSSION

Normally various permits, bonds and insurance are required for work in the public rights-of-way to ensure quality control, safety, and to protect against liability problems. Public rights-of-way as used in this report refer to property devoted for use by the general public for travel, which includes sidewalks, parkways and roadways. Because SCRTD is a Governmental Agency created under state law and had an executed Master Cooperative Agreement with the City, many of these permits, fees, and requirements were waived for the Minimum Operable Segment (MOS-1) portion of the project (Transmittal No. 3). In particular, lateral support bonds, and liability insurance required for excavation work were waived for MOS-1 since they were covered in Article 11, Indemnity and Warranty Section, of the Master Cooperative Agreement. RCC, replacing SCRTD, is currently the Government Agency created under state law responsible for the design and construction of the Metro Rail Project and will have a Master Cooperative Agreement with the City. As such, RCC through SCRTD has requested that your Board extend the approval of construction of the Metro Rail Project within the public rights-of-way to cover Phase II of the project (Transmittal No. 1).

This Report is intended to serve as a "Special Permitting Process" for the Metro Rail Phase II Contracts and Master Cooperative Agreement Work (Transmittal No. 2) within the public rights-of-way within an area one hundred feet outside of the outlines of the station areas in the station location plan (Transmittal No. 4), for the permits, requirements and restrictions listed below:

- ~~A-Permits~~
- ~~B-Permits~~
- ~~U-Permits~~
- ~~Revocable & Encroachment Permits~~
- ~~Holiday Season Restrictions~~
- ~~Street Closures~~
- ~~Excavation Permits~~
- ~~Lateral Support Bonds~~
- ~~Permit Fees~~
- ~~Liability Insurance~~

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Sewer Connection Permits, Storm Drain Connection Permits, Industrial Waste Permits, Overload Permits, Building Material Permits and Street Tree Permits are still required, if applicable, and must be obtained by the individual contractors or RCC.

This special permitting process shall be effective upon adoption of the Proposed Master Cooperative Agreement by the City Council and execution of the agreement by the Mayor and LACTC. The Proposed Master Cooperative Agreement is now being considered by the City Council.

As part of the design process for Phase II, RCC will require Geo-Technical borings along the proposed route and its immediate vicinity. RCC or its Geotechnical Contractors will still be required to obtain excavation and "A" Permits for these borings. However, permit charges such as plan check fees, inspection fees, etc. will be paid by RCC through the reimbursement procedure covered in Article 8 of the Master Cooperative Agreement.

RCC intends to begin construction of Phase II of the Metro Rail Project in February 1991 with an estimated completion date of 1998 (Transmittal No. 5). This phase extends the project from the Wilshire/Alvarado Station westerly to Wilshire Boulevard and Western Avenue, thence northerly along Vermont Avenue, westerly along Hollywood Boulevard to La Brea Avenue, northwesterly through the Hollywood Hills, and northerly along Lankershim Boulevard to the North Hollywood station at Chandler Boulevard. Phase II includes eleven passenger stations, to be constructed by the cut-and-cover method and connected by line sections to be constructed by tunneling.

The route will encroach on three City owned parks, namely, MacArthur Park, Barnsdall Park, and Runyon Canyon Park. This Special Permitting Process will not cover these encroachments. RCC shall negotiate with the City of Los Angeles Department of Recreation and Parks for permission or easements to do work in these parks.

The eleven stations and special structures, such as pocket tracks will be constructed by the cut and cover method and will therefore require the relocation and rearrangement of City facilities such as sewers, storm drains, catch basins, curb and gutter, pavement, sidewalk, street lights, and traffic signals. Public and private utilities will also be relocated or rearranged.

Individual utility companies doing advance relocation work, prior to the Notice to Proceed (NTP) for the individual Metro Rail contracts, are required to obtain individual excavation or "U" Permits. This permit requirement is waived after the issuance of the Notice to Proceed for all utility work within the station area or contract limits of work as shown on RCC's unit construction plans that are reviewed and approved by City Staff.

RCC will be responsible for submitting "AS-BUILT" drawings for all new, relocated and abandoned utilities required because of the Metro Rail construction.

Sewerage Facilities Charges, fees for new construction or change in use (increase) of existing facilities, are not waived and shall be due from RCC, when applicable.

It is a common procedure each Holiday Season to restrict issuance of permits on certain streets in commercial shopping areas. No work connected with the Metro Rail Project will be subject to such restriction, including the actual project construction or advance utility relocations required to accommodate the project. However, pursuant to Article 3.3 of the Master Cooperative Agreement, the RCC shall accommodate any request from the City to make available certain streets for any Special Event that requires the use of those streets.

The "Special Permitting Process" concept will be consistent with the proposed LACTC City - Master Cooperative Agreement which is now before the City Council, and will be subject to the terms and conditions of that Agreement. Through reimbursable work authorizations, the rearrangement of City facilities is being reviewed and approved by the City Engineer. Similarly, construction of City-owned and utility company facilities will be inspected by the Bureau of Contract Administration.

RCC has been requested to assist the Bureau of Engineering in obtaining requests for Revocable Permits from property owners for any basements, service elevators or other encroachments in the public right-of-way within the station construction areas. The gratings and hatch covers proposed in the sidewalk areas by RCC were approved by your Board in a separate report and adopted on May 4, 1987.

It is the intent of this report to expedite and assist RCC in the construction of the Metro Rail Project. Contingencies unique to each contract (Transmittal No. 2), and not covered in this report will be discussed and resolved between RCC and the appropriate level of City staff as they occur.

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This report has been reviewed and approved by the Downtown Construction Traffic Management Committee pursuant to Section 62.250 of the Los Angeles Municipal Code.

(GDM JMF LHB JT KLL RAL DAR)

Report prepared by:

CENTRAL DISTRICT

Gene D. McPherson
District Engineer
Ext. 52400

CHA/DTA:bw-057-BRD.wp

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APPROVED BY

Jerry Givens / s.
JERRY GIVENS
EXECUTIVE VICE PRESIDENT
RAIL CONSTRUCTION CORPORATION
DATE _____

Respectfully submitted,

Robert S. Horii
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