



CONSTRUCTION COMMITTEE
APRIL 21, 2005

PROJECT: METRO GOLD LINE EASTSIDE EXTENSION, METRO ORANGE LINE, EXPOSITION LIGHT RAIL TRANSIT AND FUTURE BUS AND RAIL TRANSIT PROJECTS

CONTRACT: MCI WORLDCOM

ACTION: APPROVE AMENDMENT #2 TO UTILITY COOPERATIVE AGREEMENT WITH MCI WORLDCOM

RECOMMENDATION

Authorize the Chief Executive Officer to execute Amendment #2 to the 1984 Utility Cooperative Agreement between MCI Worldcom and the Los Angeles County Metropolitan Transportation Authority (LACMTA) to define the responsibilities of each party for design and construction of MCI Worldcom and/or LACMTA facilities.

BACKGROUND

This Utility Cooperative Agreement Amendment is needed to ensure overall effective development of MCI Worldcom designs, design reviews and rearrangements for the Metro Gold Line Eastside Extension Light Rail Transit project, Metro Orange Line (San Fernando Valley Bus Rapid Transit) project, the Exposition Light Rail Transit project and future Bus and Rail Projects. Establishing a clear and consistent framework of roles, responsibilities, and procedures for coordination of the planning, design and construction of all utility rearrangements will facilitate the extensive coordination between LACMTA and MCI Worldcom.

FINANCIAL IMPACT

Funding for this scope of work is included in each major capital project's estimated total project cost. The annual work plans associated with this Utility Cooperative Agreement will be included in each fiscal year project budget. The LACMTA FY05 budget included costs for MCI Worldcom relocations necessitated by the Eastside Light Rail Transit Project and inspection for the Gold Line Yard expansion.

Since this is a multi-year agreement, the respective project managers and Chief Capital Management Officer will be accountable for budgeting necessary utility relocation review and implementation costs for each Project in future years.

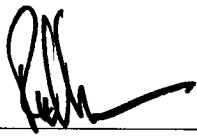
ALTERNATIVES CONSIDERED

With respect to the overall Utility Cooperative Agreement, MCI Worldcom and LACMTA could develop and execute completely new cooperative agreements for each project. This duplicative effort would take months of extensive attorney and staff discussion, review and negotiation to draft each agreement, and is therefore not recommended.

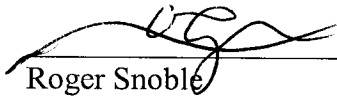
ATTACHMENT

1. 1984 Utility Cooperative Agreement
2. Amendment No. 1
3. Amendment No. 2

Prepared by: Mark Perez, Director of Program Management
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Richard Thorpe
Chief Capital Management Officer
Construction Project Management



Roger Snoble
Chief Executive Officer

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METRO RAIL PROJECT

UTILITY COOPERATIVE AGREEMENT

THE WESTERN UNION TELEGRAPH COMPANY

AND

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT



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UTILITY COOPERATIVE AGREEMENT
FOR THE
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT
METRO RAIL PROJECT

This Agreement is between the Southern California Rapid Transit District, herein referred to as "District", and The Western Union Telegraph Company herein referred to as "Utility".

WITNESSETH:

WHEREAS, District is established pursuant to Part 3 of Division 10 of the California Public Utilities Code commencing with section 30000 and will construct and operate the Southern California Rapid Transit District's Metro Rail Project in the City and County of Los Angeles; and

WHEREAS, from time to time the construction, reconstruction or improvement of District's Rapid Transit facilities will require the rearrangement of portions of Utility's facilities and the parties desire to cooperate to the end that such rearrangements be held to a minimum consistent with District's requirements and that when rearrangements are required, they be effected with the greatest expedition and minimum interference with the operations of the parties;

NOW, therefore, in view of their mutual covenants, herein contained, the parties agree as follows:

ARTICLE 1

GENERAL

1.1 Scope of Agreement - This Agreement specifies the procedures which District and Utility will follow in identifying, planning, designing and effecting Rearrangements of Utility's Facilities in order for District to construct or operate its Project and the manner in which the Utility will be reimbursed for its costs of such activities. Both District and Utility agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental Agreements hereto.

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

- (a) Abandonment is defined as the permanent termination of service in or on an existing Facility as authorized by the Utility.
- (b) Betterment is defined as any upgrading or improvement of a Conflicting Facility by a Replacement Facility in terms of service capacity.
- (c) Conflicting Facility is defined as that existing Facility that is so situated as to require Rearrangement because of incompatibility with the Project.
- (d) Design is defined as that engineering and architectural work which results in the production of maps, plans, drawings, and specifications which are necessary to the elimination of conflicts and effectuation and construction of Rearrangements, Replacement Facilities, and the Project, under the terms of Agreement.

- (e) District is defined as the District, its employees, agents, contractors, and subcontractors.
- (f) District Representative is defined as the General Manager, Southern California Rapid Transit District or his authorized representative who has the power to conduct reviews and make approvals as required by this Agreement.
- (g) Facility is defined as any or all property, real or personal used for the provision of communication service to the public by the Utility, including but not limited to wires, cables, poles, cross-arms, anchors, guy, fixtures, conduits and manholes, and any equipment, apparatus, or structures appurtenant thereto or associated there with.
- (h) Metro Rail Project (also referred to herein as Project) is defined as that rail rapid transit system which the District either presently or at some time in the future proposes to construct for the public transportation of passengers.
- (i) Rearrangement is defined as the removal, replacement, alteration, reconstruction, or relocation of a Conflicting Facility or portion thereof for the purpose of construction and operating the Project or portion thereof for the purpose of construction and operating the Project or portion thereof, including but not limited to: Replacement of any Conflicting Facility or portion thereof with a Replacement Facility, permanent or temporary reconstruction, relocation or support of a Conflicting Facility or portion thereof, permanent or temporary relocation of a Conflicting Facility or portion thereof.

- (j) Replacement Facility is defined as that 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 the Utility's design standards on projects financed solely by the Utility.
- (k) Substitute Facility is defined as a Facility that is equal to the corresponding Conflicting Facility which is to be Rearranged, in terms of service capacity and which meets the Utility's current design standards on projects financed solely by the Utility.
- (l) Temporary Facility is defined as a Facility constructed for the purpose of ensuring continued service during a Rearrangement.
- (m) Utility is defined as the Utility, its employees, agents, contractors and subcontractors.
- (n) Utility Representative is defined as that person, designated by Utility or his authorized representative under the terms of this Agreement, who has the power to conduct reviews and make approvals as required by this Agreement.
- (o) Work Order is defined as that document which the District shall issue to the Utility to authorized Utility's performance of Design and Rearrangement work and the Utility's supply of materials, under the terms and conditions of this Agreement.

ARTICLE 2

DESIGN

2.1 Design Coordination - District Representative and the Utility 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 and Rearrangement of Utility's Facilities pursuant to this Agreement in order to permit the construction and operation of the Project.

2.2 Design Performed by Utility - When District and Utility mutually agree that Design for a specific Rearrangement of Facilities to eliminate a conflict shall be performed by the Utility, the following procedures shall govern:

- (a) The District shall issue a Work Order to the Utility, upon receipt of which the Utility shall promptly proceed to perform the Design of said Rearrangement.
- (b) The Utility shall schedule its Design to coincide with the District's design schedule and shall coordinate throughout Design with the District as is necessary to develop plans satisfactory to both District and Utility for each Rearrangement.
- (c) During Design, the Utility shall provide to the District a list of those Betterments to Replacement Facilities which Utility desires in a specific section so that the Design of said Betterments may be included in the plans.

- (2) The Utility shall submit a set of the completed Design plans to the District for review. Submitted with the Design plans for a Rearrangement, the Utility shall prepare and submit to the District the Utility's estimate of the cost less applicable credits in accordance with Article 9 herein, and the Utility's estimate of the time needed to perform the required Rearrangement work.

2.3 Design Performed by District - When District and Utility mutually agree that the District shall perform the Design of a specific Rearrangement, the District shall issue a Work Order to the Utility, upon receipt of which the Utility shall perform the activities referred to in the following subparagraphs:

- (a) District will coordinate with the Utility during the initial phase of Design and will present to the Utility a schedule for the Design of Rearrangements.
- (b) Coordination of Design and the development of the Design plans and specifications may be accomplished through the District Representative who shall confer from time to time with the Utility Representative. As soon as coordination allows, the Utility shall inform the District what Betterments, if any, to respective Replacement Facilities the Utility will desire.
- (c) During the progress of Design, at the stages of completion, mutually agreed upon, the District shall submit to the Utility, plans and specifications for the Rearrangement of the Utility's Conflicting Facilities. Within a reasonable time after receipt thereof, the Utility shall review the plans and

specifications and transmit its comments to the District. The District shall consider the Utility's comments and shall revise the plans and specifications accordingly.

2.4 Design Requirements and Criteria - Rearrangement of Utility's Conflicting Facilities shall conform to standard practices of the Utility as are in effect on January 1, 1984. Where field conditions require other than standard practices to be used the Utility may utilize special designs that the Utility feels is appropriate. Such special designs shall be submitted by the Utility to the District for approval prior to construction.

2.5 Design Standards - Changes in Approved Plans - During development of plans by District or Utility, the standards of engineering and materials to be employed in the Rearrangement shall not exceed the standards utilized in the performance of work on projects financed entirely by the Utility, unless so agreed in writing by the parties. The District or the Utility may make changes to plans prior to or during the progress of the work only with written concurrence of the other party.

2.6 Construction Staging Plans - During Design of the Project, the District in coordination with the City shall develop construction staging plans. Construction staging plans shall provide for the handling of vehicular and pedestrian traffic on streets disrupted during construction of the Project and shall show construction phases, road closures, detours, signs and other pertinent information. To assist the District in coordination of the development of construction staging plans, Utility shall furnish in writing during Design to the District the following information:

- (a) Facilities in which service must be maintained;
- (b) Facilities in which service may be abandoned;

- (c) Proposed sequence of construction of Facility Rearrangements;
- (d) Estimates of duration of street closures or restrictions necessary to construct Facility Rearrangement.
- (e) Rights-of-Way which must be acquired for Replacement Facilities and Rearrangements.

2.7 Coordination of Rearrangements - During the progress of Design, the District and the Utility shall decide whether the necessary Rearrangements of Conflicting Facilities on any section can best be performed by the Utility prior to construction of the Project; by the Utility concurrently with construction of the Project; or by the District; or through a combination of said alternatives.

2.8 Coordination of New Utility Facilities - If the Utility plans to construct new facilities that cross or otherwise would occupy proposed rights-of-way of the District, the Utility should make arrangements to install such new facilities in a manner that will meet the requirements of the Project.

2.9 Reproducible Contract Documents - District and Utility agree to provide the other with suitable reproducible copies of those final contract documents 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.

ARTICLE 3 PERMITS

3.1 Permits - After approval of the Design of Rearrangements as set forth in Article 2 herein, the party performing the Design shall obtain all necessary licenses and permits required by municipal,

county and state authorities for the Rearrangement of Utility's facilities within, under, over or above any public street, highway, bridge or other public way.

ARTICLE 4

ACQUISITION OF REPLACEMENT RIGHTS-OF-WAY

4.1 Replacement Rights-of-Way - General - Rearrangement of private rights-of-way for the relocation of Utility's Conflicting Facilities shall be determined during Design and if needed, may be acquired by District or Utility following approval of location and type by Utility prior to acquisition. The District or the Utility will acquire the required private rights-of-way to allow for the Rearrangements in an orderly manner so as not to impair District's schedule. The location and type of said replacement rights-of-way shall be mutually agreed upon in accordance with this Agreement. However, to the extent Design will permit, Rearrangements shall be located in public ways. Utility shall convey to District, at no cost to District, all abandoned rights, title and interest, which it possesses, in the existing Utility real property interest (except franchise rights) which has been taken out of service by the Rearrangement and which is required for the construction of the Project.

4.2 Property Rights for Project Construction - If, prior to District's scheduled date of commencement of work on a section or portion thereof, any Rearrangement necessary to eliminate a conflict has not been accomplished, Utility shall grant to District sufficient property rights, licenses or permits, if necessary, to allow District to proceed with construction of said section or portion thereof in accordance with District's schedule, provided such grant does not interfere with Utility's service.

4.3 Utility Easements within Project Right-of-Way - If a Rearrangement shall be made so that the Replacement Facility will be located within the Project's right-of-way, District shall grant

Utility a replacement utility easement to accommodate such Replacement Facility. Such replacement utility easement shall be granted at no cost to Utility. It is hereby understood that in accepting replacement utility easement and releasing existing rights, Utility acquires the right to install, operate, maintain and remove its facilities on said replacement utility easement, provided that Utility shall provide reasonable notice to District before any such installation, maintenance, or removal.

ARTICLE 5
EFFECTING REARRANGEMENTS

5.1 Utility Performance of Rearrangement - If the Work Order so provides, the Utility will perform Rearrangement of Conflicting Facilities necessary to eliminate a conflict with the Project. In such event:

- (a) Upon receiving said Work Order, the Utility shall make its best efforts to commence and thereafter diligently prosecute such Rearrangement work to completion in accordance with the Work Order and the Design plans and specifications.
- (b) Where Rearrangement of Facilities are to be performed under Contract to the Utility, it shall be awarded to the lowest qualified bidder who submitted a proposal in conformity with requirements as set forth in the solicitation for bids.
- (c) The Utility shall not make changes in the Design Plans without the District's approval.
- (d) In the event that Temporary Facilities are necessary to effect a Rearrangement, the Utility may use lands owned or controlled by the District for the purpose of

erecting such Temporary facilities thereon, provided that the District shall have approved in writing the location and duration of such Temporary Facilities. Upon completion of Replacement Facilities in their permanent locations, the Utility shall remove all such Temporary Facilities and restore the area as near as practical to its original condition.

- (e) The Utility shall notify the District at least 5 working days prior to commencing the work of each Rearrangement so that the District may make arrangements for such inspection and record keeping as the District may desire.

- (f) The Utility shall not exceed the amount of money specified in the Work Order for any work authorized under this Agreement without the prior approval of the District in writing. The Utility agrees to use its best efforts to perform the work specified in each Work Order within the cost specified therein. If, at any time, the Utility has reason to believe that the cost which it expects to incur under any Work Order in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the specified cost set forth in the Work Order, or if, at any time, the Utility has reason to believe that the total cost to the District under said Work Order will be greater or substantially less than the previously specified cost, the Utility shall notify the District in writing to that effect, giving the revised cost estimate for the work authorized in said Work Order.

5.2 District Performance of Rearrangement - If the Work Order so provides, the District may perform any Rearrangement of Conflicting Facilities. In such event:

- (a) All work by the District or District's contractor shall be in conformance to the Design plans and specifications agreed to by the District and the Utility during Design. If changes in Design plans of Rearrangement are necessary, the District shall submit such changes to the Utility for review.
- (b) All cable work, including pulling and splicing of cable, shall be performed by Utility, with the exception that if any Facility or portion thereof is subjected to Abandonment, cables may be removed by the District after such cables have been taken out of service by the Utility. The District shall issue a Work Order to the Utility for all such cable work, and such Work Order will specify the estimated period in which such cable work is to be performed.

5.3 District Performance of Rearrangement - Utility Supply of Materials -

If the District so requests, the Utility shall supply any necessary materials to perform a specific Rearrangement. The District shall issue a Work Order for Utility supply of materials and shall reimburse the Utility therefor in accordance with this Agreement. The Utility agrees not to divert materials so ordered from Project. The District shall inspect materials furnished by the Utility and after District acceptance thereof, the District shall be responsible for subsequent loss or damage. Materials furnished by Utility and subsequently found to be defective shall be replaced by the Utility at the Utility's expense.

5.4 Maintenance - In any case in which a utility failure occurs or in which an interruption in utility service occurs, the Utility, shall after notifying the District Representative, have immediate access to District's construction area for the purpose of performing appropriate

restoration work. In all cases of interruption in Utility's service, the District agrees that it will, upon notice of such failure, make whatever accommodations are necessary to permit the Utility to undertake restoration work. The Utility shall schedule routine maintenance of Facilities so as not to interfere with Project construction.

5.5 As-Built Drawings - The District and Utility shall maintain a set of "as-built" drawings of Rearrangements performed by District and Utility which shall be available for review by the District and the Utility during the progress of construction. Upon completion of the Rearrangement work, the Utility shall receive the original drawings and the District shall receive a polyester film reproductions or equivalent reproducible plans showing all Replacement Facilities installed.

ARTICLE 6 INSPECTION

6.1 Inspection During Construction - The Utility shall have the right to inspect the Project in those areas in which Utility Facilities exist during all construction activities.

6.2 Final Inspection - As soon as the work of any specific Rearrangement or Replacement Facility has been completed, the party who performed such work shall notify the other party in writing that said Rearrangement or Replacement Facility is ready for final inspection. The final inspection of any Rearrangement or Replacement Facility under this Agreement shall be attended by representatives of District and Utility. At such inspections, each party shall inform the other of any deficiencies or discrepancies in any work discovered in the course of such final inspection. The party who performed or who directed the performance of the work being inspected shall direct or perform any necessary corrective work. Upon acceptance of the

Rearrangement of Replacement Facilities, Utility shall assume sole responsibility for routine maintenance of said Rearrangement or replacement facilities.

ARTICLE 7 DISPOSITION OF SALVAGED MATERIALS

7.1 Salvage by District - The District may salvage certain materials belonging to the Utility during the course of Rearrangement. If appropriate, salvaged materials shall be stored by the District until such time as the progress of work allows the reinstallation of such materials. Materials which are not to be reused and which the Utility desires to retain shall be returned by the District to the appropriate Utility storage facility. If the materials removed by District are not reusable and are not desired by the Utility, such materials shall become the property of the District, unless Design plans provide otherwise.

7.2 Salvage by Utility - Salvaged materials which are removed by the Utility and which are suitable for reuse may be reclaimed by the Utility.

7.3 Salvage Credits - The District shall receive a credit for salvage for such materials described herein retained by the Utility as provided in Article 9 of this Agreement.

ARTICLE 8 REIMBURSEMENTS

8.1 Reimbursement to Utility - The issuance of a Work Order shall obligate the DISTRICT to reimburse Utility for any activity or work performed or materials acquired for each Rearrangement, in accordance with the terms of this Agreement; and such reimbursement shall be for the actual direct costs and indirect costs incurred by Utility for

such activities or work performed or materials acquired under the terms of the Agreement, less credits to the DISTRICT, as provided in Article 9 of this Agreement. Direct costs shall include allowable direct labor and material costs spent specifically for work performed under this Agreement. Indirect costs shall be payable as a percentage of direct salary costs at such percentage rate to be determined through an annual audit of the Utility's Cost Accounting System. Adjustments upward and downward in this percentage rate will be made retroactively based on each annual audit, with the new percentage rates to be used as the indirect billing rate for each subsequent year. This procedure will be followed for the duration of this Agreement.

8.2 Reimbursement to District - In those cases in which Rearrangement or other work under this Agreement is performed by the District, the Utility shall reimburse the District for credits, as defined in Article 9 of this Agreement.

8.3 Reimbursement for Abandoned Facility - In those cases in which the District and the Utility agree that the construction of the District's Project will eliminate the service need for a specific Conflicting Facility, such Conflicting Facility may be abandoned by the Utility, and the District shall not be required to replace or compensate the Utility for such Conflicting Facility, except that the District shall compensate Utility for work necessary to sever such Conflicting Facility.

ARTICLE 9 CREDITS

9.1 Credits to District - The District shall receive credit from the Utility against work performed under this Agreement for Betterment, salvage, and expired service life. The amount of credits shall be determined by mutual agreement of the parties based upon applicable Utility books, records and documents. To assist in the determination

of credits due the District under this Agreement, the District and the Utility shall conduct an inspection survey of each Conflicting Facility during the Design stage. Pursuant to a Work Order the Utility shall provide the District with drawings, plans, or other records necessary to conduct such survey. The survey shall describe the physical attributes of the Conflicting Facility such as number, length, diameter dimension, type of material, number and type of service connections. The survey shall further describe for each Conflicting Facility, the date of construction or installation; the expected service life as derived from Utility's records; the present condition; and whether materials contained therein are reusable or salvageable.

9.2 Credit for Betterments - Credit for Betterments shall be allowed where there is an increase in service capacity of a Replacement Facility as compared to the Conflicting Facility or corresponding Substitute Facility as defined in this Agreement. The amount of a Betterment credit shall be the estimated cost of the Replacement Facility, minus the estimated cost of a Substitute Facility; and said estimated costs shall be based on the unit price schedules agreed to by the parties. The amount of betterment credit, if any shall be determined by the parties during the Design.

9.3 Credit for Salvage - Credit for salvage shall be allowed for items of materials and equipment recovered for the Utility's existing Facilities in the performance of work specified herein. The amount of a salvage credit, if any, shall be computed as follows:

- (a) Credit for Reusable Materials - If the removed or salvaged materials are reusable, the credit shall equal the cost to the Utility of like or similar materials.
- (b) Credit for Junk Value - If the removed materials are not useable, the credit shall equal the junk value of such materials.

(c) Credit of Salvage Program - The Utility shall receive a deduction from a given salvage credit for the reasonable costs of removing and transporting salvageable materials.

(d) District Disposition of Junk Materials - No credit shall be due the District in the case of junk materials which are removed and disposed of by the District.

9.4 Credit for Expired Service Life - The District shall receive a credit for the value of the expired service life of Utility's Existing Facilities being replaced if the Replacement Facility will have a greater expected period of useful service than the period which the Existing Facility would have, 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 of the Existing Facility divided by the age of the existing facility plus the estimated life expectancy of the existing facility. The amount of credit shall be agreed upon by the Utility and District in the appropriate Work Order.

ARTICLE 10

INDEMNITY

10.1 Indemnification by District - District agrees to hold Utility and Utility's agents, servants and employees, harmless from any and all losses, claims, damages, suits or actions of any character for damages to property and for injury or death to persons arising out of the negligence of District and District's agents, servants, and employees.

10.2 Indemnification by Utility - Utility agrees to hold District and District's agents, servants, and employees, harmless from any and all losses, claims, damages, suits or action of any character for damages to property and for injury or death to persons arising out of the negligence of Utility and Utility's agents, servants, and employees.

ARTICLE 11
WORK ORDERS AND BILLINGS

11.1 Work Performed by Utility - All work performed by the Utility under the terms of this Agreement shall be initiated by work Orders as provided herein.

11.2 Work Orders - The District shall issue Work Orders to the Utility to authorize the performance of all work or purchase of all materials and equipment required under the terms and conditions of this Agreement. The Utility or Utility's contractor or subcontractor may perform any work so authorized. Each Work Order issued under the terms of this Agreement shall specify the work to be performed and any materials or equipment to be acquired, the maximum amount of money which the Utility may expend therefor, and the estimated starting and finishing dates for work so authorized.

11.3 Work Order Changes - Any proposed changes in a Work Order issued under this Agreement shall be submitted in writing to the District for its prior approval, and the District agrees to act promptly on any such request; provided, however, that any proposed change occasioned by field construction difficulties may be submitted to the District orally, by telephone, and later confirmed in writing by Utility; and in such event, the District agrees to act on such oral request immediately. The District may terminate any Work Order at any time, but the District shall be liable to the Utility for reimbursement in accordance with this Agreement of costs, if any, already incurred, and costs, if any, necessary to restore the Utility's Facilities in the

process of Rearrangement to a permanent condition for the provision of service to the public. The Utility agrees to promptly request written revisions to Work Order maximum amounts in the event of cost overruns.

11.4 Procedures for Utility Billings to District - The parties agree that the following procedures shall be followed concerning the submission of billings by Utility to District, monthly on a progress basis for work performed by the Utility under a specific Work Order. Utility billings shall begin as soon as practicable following the commencement of a specific Rearrangement or other work under a given Work Order. Billings shall be in quadruplicate, shall specify costs incurred for that billing, shall bear the District's Work Order number, and supported by copies of invoices and other data to support costs incurred and shall be maintained for audit on file in Utility's Accounting Center and shall be addressed to the District Representative. Each billing shall be noted as either progress or final. The final billing, with a notation that all work covered by a given Work Order has been performed, shall be submitted to the District as soon as practicable following the completion of said Rearrangement, shall recapitulate prior progress billings, and shall show costs incurred already paid by the District. All billings shall identify the inclusive dates upon which work billed therein was performed.

11.5 Procedures for District Billings to Utility - In those cases in which the District performs Rearrangements or other work under the terms of this Agreement, the District shall submit to the Utility regular monthly progress billings indicating actual work performed for those credits properly reimburseable to the District under this Agreement. District billings 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 the Utility as soon as practicable following the completion of said Rearrangement or other work.

11.b Payment of Billings - The District shall pay each billing presented under the foregoing procedures within 30 days of receipt thereof, provided, however, that such payments shall be conditional subject to post-audit adjustments and that the District may withhold credit amounts due the District if Utility has not posted such credits within 60 days after submittal of requests for same by the District.

ARTICLE 12
RESOLUTION OF DISPUTES

12.1 Arbitration - Where No Work Stoppage - In the event of a claim or dispute arising out of this Agreement, both parties shall make good faith efforts to resolve said dispute through negotiation. Failing a resolution of the dispute through these good faith efforts, or in the absence of good faith efforts to resolve the dispute, either party may serve upon the other a written demand for arbitration. The parties within 10 days thereafter, or within such extended period as the parties agree to in writing, shall attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each party, prior to the expiration of said time period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator (hereinafter "neutral arbitrator").

If either party fails to designate its arbitrator within the 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 5 days after their appointment, a neutral arbitrator shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable to this Agreement, but only with respect to those issues not involving work stoppage. The arbitrator's award shall be supported by law and substantial evidence, and further, the arbitrator shall issue 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.

12.2 Arbitration - Work Stoppage - In no event shall work be stopped in the event of a claim, or dispute, except 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, a neutral arbitrator shall be immediately designated pursuant to Section 1281.6 of the California Code of Civil Procedure.

No neutral arbitrator shall be selected who is unable to hear the dispute within five days after being selected. Notwithstanding Sections 1282.2(b) and 1286.2(e) (regarding postponement of the hearing) of the California Code of Civil Procedure, where work is stopped the neutral arbitrator may not adjourn the hearing except upon the stipulation of all parties to the arbitration. In addition to all other issues the neutral arbitrator shall also determine whether it was necessary to stop work, the other party shall be entitled to damages arising out of such work stoppage.

12.3 Impartiality of Arbitrator - No person shall act a neutral arbitrator who in any way has any financial or personal interest in the results of the arbitration or has any past or present relationship with any of the parties or their counsel. Failure to disclose any such interest or relation shall be grounds for vacating the award.

12.4 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.

ARTICLE 13
FEDERAL REQUIREMENTS

This Agreement is 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:

13.1 Audit and Inspection - Utility shall permit the authorized representatives of the District, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all records relating to the Utility and its subcontractor's 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 District, or of a local public body, during this tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. To the District's or Utility's knowledge, no board member, officer or employee of the District has any interest, whether contractual, noncontractual, financial or otherwise in this transaction, or in the business of the Utility; 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, Utility shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Utility 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 Utility will cooperate with the District in meeting it's commitments and goals with regard to the maximum utilization of minority business enterprises, and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

A 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 on 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 Carribbean 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); or
- (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 Utility. Copies may be made for the District's records.


13.7 Maintenance of Records - The Utility agrees to keep and maintain records showing actual time devoted and all costs incurred in the execution of the agreement for a period of 3 years from the accepted completion of the Rearrangement.

13.8 Assignment - Neither District nor Utility 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.

13.10 Severability - In the event that any of the provisions, or portions or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, DISIRICT and Utility shall negotiate an equitable adjustment in the affected provisions of this Agreement with a view toward effecting the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications therefor, shall not be affected thereby.

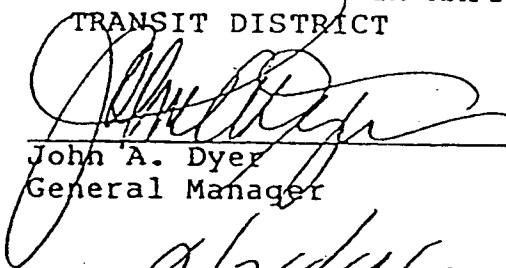
THE WESTERN UNION
TELEGRAPH COMPANY

BY: 

TITLE: VP ENGINEERING

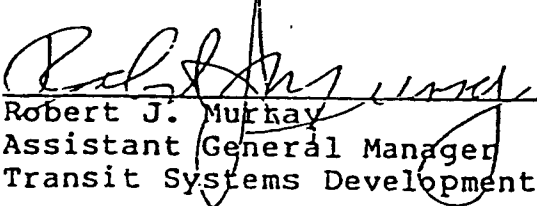
DATE: _____

SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT

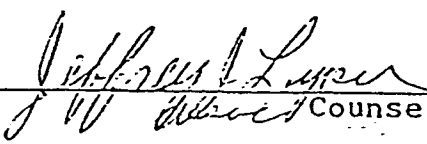

John A. Dyer
General Manager

DATE: 2/24/84

APPROVAL RECOMMENDED:


Robert J. Murkay
Assistant General Manager
Transit Systems Development

APPROVED AS TO FORM:


J. W. [unclear] Counsel - R.E.

DATE: 10-4-83

**METRO RED LINE EASTSIDE EXTENSION PROJECT
UTILITY COOPERATIVE AGREEMENT
AMENDMENT NO. 1**

Southern California Rapid Transit District, predecessor to the Los Angeles County Metropolitan Transportation Authority (AUTHORITY) and The Western Union Telegraph Company, predecessor to MCImetro Access Transmission Services, Inc. (UTILITY), have previously entered into a Metro Rail Project Utility Cooperative Agreement dated February 24, 1984 (the Utility Cooperative Agreement) for the rearrangement of UTILITY facilities made necessary by the Metro Red Line Eastside Extension Project; and

The parties now desire to amend the Utility Cooperative Agreement.

In consideration of the Utility Cooperative Agreement and the mutual covenants and agreements contained herein, the parties agree as follows:

- A.1 All references to the Southern California Rapid Transit District (District) shall mean the Los Angeles County Metropolitan Transportation Authority (AUTHORITY).
- A.2 All references to the Western Union Telegraph Company shall mean the MCImetro Access Transmission Services, Inc. (UTILITY).
- B. The Definition under Section 1.2(h) shall be revised in its entirety and the following definition substituted in its place and stead:
 - (h) Project The term "Project" shall be deemed to include, but not be limited to the "Metro Red Line Eastside Extension Project" which is generally defined as that rail transit system beginning at Union Station to Whittier Boulevard and Atlantic Avenue in Los Angeles, approximately 7 miles long, that follows the routes shown on Exhibit A, attached hereto, and which AUTHORITY proposes to construct for public transportation purposes.
- C. The Audit and Inspection under Section 13.1 shall be revised in its entirety and the following Section 13.1 substituted in its place and stead:

13.1 Audits generally will be conducted in accordance with the provisions of the Federal Acquisition Regulations (FAR) Part 52.215-2. An audit will include, but not be limited to, the right to visually examine, record (i.e., take pictures of materials or facilities), and photo copy any necessary documents, files, or download computer records, at the agency's/utility's reasonable expense, and retain the photo copied or downloaded documents/data. The Utility shall keep and ensure that any of its sub-contractors and/or sub-consultants keep all detailed accounts, records, bills and receipts relating to payments received, made, expected to be received or expenses incurred, for a period of four (4) years from the date of the completion of the rearrangement.

D. The following notification shall be added to the agreement as Section 13.11:

13.11 Notices 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 AUTHORITY:

Los Angeles County Metropolitan
Transportation Authority
ONE Gateway Plaza
Los Angeles, California 90012
Alfonso Rodriguez
Deputy Executive Officer, Construction

To UTILITY:

MCImetro Access Transmission Services, Inc.
2250 Lakeside Boulevard
Richardson, Texas 75082
Attention: Mr. Kenneth C. Geeslin

The Parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement, but each such alternate procedure shall be described in writing and signed by the AUTHORITY representative and the UTILITY representative.

As amended and modified by this Amendment No. 1, all of the terms, covenants, and conditions of the Utility Cooperative Agreement are, and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 18th day of December, 1996.


"AUTHORITY"

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY

By: 
JOSEPH E. DREW
Chief Executive Officer

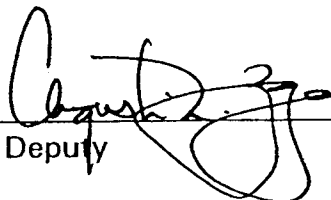
"UTILITY"

MCImetro ACCESS
TRANSMISSION SERVICES, INC.

By: 
KENNETH C. GEESLIN
Vice President

APPROVED AS TO FORM:

DeWitt W. Clinton
COUNTY COUNSEL

By: 
Deputy

ATTEST:


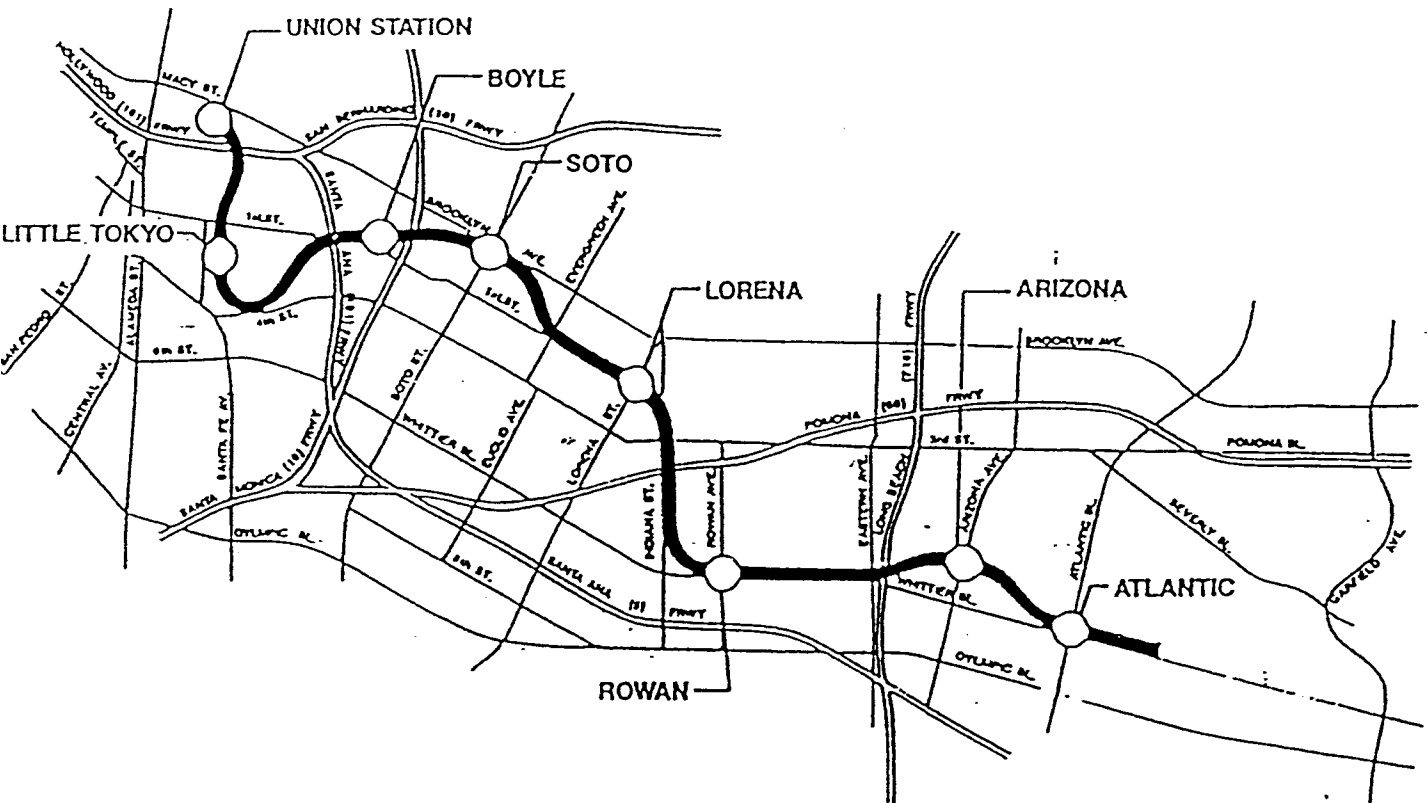
By: 
Name: MARY STEIGMAN
Assistant Secretary

EXHIBIT A

M METRO RED LINE - EAST SIDE EXTENSION



AMENDMENT # 2

**UTILITY COOPERATIVE AGREEMENT
FOR RAIL AND BUSWAY TRANSIT PROJECTS
BETWEEN MCI METRO ACCESS TRANSMISSION SERVICES
AND
THE LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

THIS AGREEMENT (“Amendment”), dated _____, 2004 is made by and among The Los Angeles County Metropolitan Transportation Authority (“Authority”), MCImetro Access Transmission Services LLC (“MCI Metro”), a successor to MCImetro Access Transmission Services, Inc. (“Predecessor Utility”). As used in this Agreement, terms identified by initial capital letters shall have the meanings set forth in Article 1, or as elsewhere provided in this Agreement.

RECITALS

- A. Authority is a public entity created by the California State Legislature for many purposes including, but not limited to, the design, construction, and operation of rail and bus transit systems and other transportation facilities in Los Angeles County.
- B. Authority proposes to design, construct and operate facilities necessary and convenient for various rail and busway transit systems within the County of Los Angeles.
- C. Authority historically has used the “Design/Bid/Build” method of project delivery for its rail transit projects. However, Authority anticipates adopting the “Design/Build” method of project delivery (and/or other procurement methodologies) for some future projects. The use of Design/Build and/or such other methodologies will require numerous changes in Authority’s approach to those projects.

D. MCI Metro and Authority are parties to that certain Metro Rail Project Utility Cooperative Agreement dated February 24, 1984 between the Western Union Telegraph Company, (a predecessor in interest of Utility) and the Southern California Rapid Transit District (“SCRTD”) (Authority’s predecessor in interest), as amended by that certain Metro Red Line Eastside Extension Project Utility Cooperative Agreement Amendment #1 between AUTHORITY and Predecessor Utility dated December 18, 1996 (as amended, the “Original Agreement”) which, among other things, establishes procedures for the Rearrangement of Utility’s Facilities affected by certain rail transit systems constructed or to be constructed by Authority.

E. One of the MCI companies in AUTHORITY right of way is Metropolitan Fiber Systems of California, Inc. d/b/a Metropolitan Fiber Systems of Los Angeles (“MFS California”). MFS California merged into MCI Metro as of April 20, 2004 and the facilities of MFS California are now part of the facilities of MCI Metro pursuant to this Agreement.

F. The parties hereto desire to amend the Original Agreement in order (1) to apply its terms to Authority’s proposed Busway transit systems as well as to all of its proposed rail transit systems; (2) to make such changes to its terms as are necessary or appropriate to accommodate Design/Build as well as Design/Bid/Build and other procurement methodologies for delivery of rail and busway transit systems; (3) to make certain other modifications to the Original Agreement; and (4) to add another MCI company to the Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree, and do hereby amend the Original Agreement, as follows:

1. MCI WorldCom Network Services, Inc. (“MWNS”) shall be added as a party to the Original Agreement and this Amendment. By MWNS’s signature to this Amendment, MWNS agrees to be bound to the terms and conditions of the Original Agreement and this Amendment as a Utility. Any reference to the term

“Utility” in the Original Agreement or in this Amendment shall refer to MWNS as well as MCI METRO.

2. Article 1, Section 1.1 of the Original Agreement shall be deleted and the following language shall be added in its place:

1.1 Scope of Agreement – This Agreement applies to all Authority projects identified during the term of this Agreement. Among other things, this Amendment and the Original Agreement specify (a) the procedures which Authority and Utility will follow in identifying, planning, designing and effecting all Rearrangements of Utility’s Facilities that are necessary in order for Authority to construct and operate Transit Projects, and (b) the manner in which Utility and Authority will be reimbursed for their respective costs of such activities. Both Authority and Utility agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental agreements hereto.

3. All definitions contained in the Original Agreement shall apply to this Amendment except to the degree they may be modified in this Amendment. The following definitions shall be added to the Original Agreement, Article 1, Section 1.2:

(p) Busway Project -- is any busway system of Authority, which is constructed for the public transportation of passengers. A Busway Project may be located on an exclusive busway or may share the roadway with other vehicles. “Busway Project” may refer to any one of the busways, or any portion or section thereof, as the context may require.

(q) Conditional Design Submittal -- means a submittal by Authority to Utility of the Design for components of a particular Rearrangement (or element thereof) prior to completion of the Final Design for the entire Rearrangement.

(r) Design/Build (D/B) -- is the method of project delivery in which a Design/Build Contractor is engaged to furnish the Final Design of and construct a project.

(s) Design/Build Contract (D/B Contract) -- is a contract with a D/B Contractor for Design and construction of Transit Project facilities and/or related Rearrangements.

(t) Design/Build (D/B) Contractor -- is defined as a single entity or joint venture, which is engaged by Authority to complete the Design of and construct a Transit Project and/or related Rearrangements pursuant to a Design/Build procurement.

(u) Design Development -- is the phase of the Design process, which validates schematic design concepts and system criteria and develops a clear indication of design solutions for requirements outlined in the Preliminary Engineering Design phase. At the completion of Design Development, major features of the architectural, structural Design and third party interfaces have advanced in conjunction with performance specifications, thereby providing the basis for Final Design.

(v) Environmental Laws -- means all local, state, and federal laws, rules, ordinances, orders and requirements pertaining to Hazardous Materials including, but not limited to, the California Environmental Quality Act, the California Coastal Act, the California Land Conservation Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation Recovery Act.

(w) Final Design -- is the phase of the Design process that provides the detailed design and technical specifications for all temporary and permanent project facilities. This phase addresses and resolves all Design review comments, construction issues, and third party comments and finalizes all engineering, architectural, and system designs necessary for complete construction documents. The term also includes the products of such phase of the Design process.

(x) Hazardous Materials -- means "hazardous substances" as that term is defined in Division 20, Chapter 6.8 of the California Health & Safety Code.

(y) Preliminary Engineering (“PE”) Design -- is the phase of the Design process which takes a project from a conceptual state to a level of project Design definition that describes the project technical and architectural approach in order to determine environmental and community impacts, interfaces with utilities and existing infrastructure/facilities, operational characteristics, an estimate of project costs and a project execution schedule. The term also includes the products of such phase of the Design process. The PE Design phase for a Transit Project is initiated at the conclusion of the Draft Environmental Impact Statement and after the selection of the locally preferred alignment.

(z) Project Plans -- means Authority’s drawings, plans and specifications for a Transit Project, which Authority has identified as the plans on which design of affected Rearrangements should be based. Utility acknowledges that Project Plans may or may not be at Final Design Level.

(aa) Protected Materials -- means any paleontological, archaeological, cultural, or similar resources requiring protection pursuant to applicable law during construction.

(bb) Rail Project -- means those rail transitways of Authority that are adopted for construction for the public transportation of passengers. “Rail Project” may refer to any one of such transitways, or any portion or section thereof, as the context may require.

(cc) Transit Projects – are Rail Projects and Busway Projects collectively, and a “Transit Project” is defined as an individual Rail Project or Busway Project, as the context may require. Where the context so requires, “Transit Project” also refers to the Design and construction undertaken by or at the direction of Authority in order to create a Rail Project or Busway Project.

(dd) Utility Standards -- are the latest editions of Utility’s written standards in effect as of issuance of Authority’s first Work Order authorizing design of such Rearrangement by Utility or Utility’s review of plans and specifications prepared by Authority, as applicable.

4. The following sentence shall be added to Article 2, Section 2.1 of the Original Agreement:

Authority shall consult with the Utility Representative in establishing the schedule for Design of Rearrangements to be consistent with Authority's schedule for each Transit Project.

5. The following sentence shall be added as the last sentence to the existing Article 2, Section 2.2(c):

The Authority shall have the right to refuse to allow any Betterment but only if such Betterment has an adverse impact to a project schedule.

6. Article 2, Section 2.3 of the Original Agreement shall be deleted and replaced with the following:

2.3 Design Performed by Authority - If Authority and Utility mutually agree that Authority shall Design a specific Rearrangement, Authority shall issue Work Orders for Utility to review plans and specifications as required, and the following procedures shall govern:

A. Coordination of Design and the development of the Design plans and specifications shall be accomplished through the Authority Representative who shall confer from time to time with the Utility Representative, except to the extent that responsibility for same has been delegated to Authority's consultants and/or contractors.

B. Authority or its D/B Contractor shall submit to Utility plans and specifications for each Rearrangement at the Preliminary Engineering, Design Development and Final Design stages for Utility review and approval or comment consistent with the requirements of this Agreement; provided, however, that the schedule for such submittals and responses shall conform to Authority's schedule for the subject Transit Project and to the following requirements:

(a) Authority will give Utility at least three (3) business days' notice that it will be submitting a Design for Utility's review. Within five (5) business days after Utility's receipt of any Design submittal, (i) Utility shall inform Authority whether the submittal is sufficiently complete for Utility review purposes, and (ii) if not sufficiently complete, Utility shall so notify Authority, or shall return the submittal to Authority together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies. If no such notice or return is received by Authority within such five (5) business days, the submittal shall be deemed complete and acceptable for review purposes. For purposes of this Section 2.3, the determination as to whether a Conditional Design Submittal is sufficiently complete for Utility review purposes shall be based solely on whether the information provided is sufficient to review the particular components or elements as to which Utility's review has been requested.

(b) Within thirty (30) days after receipt of each submittal, Utility shall review and approve the submittal or transmit its comments to Authority. If no comments are received within such period, then the contents of such submittal shall be deemed complete and satisfactory to, and approved by, Utility.

(c) The provisions of this Section 2.3 also will apply to any resubmittal of a Design by Authority, whether in response to a Utility notice or return of an incomplete submittal, or in response to substantive Utility comments.

C. Utility shall confine its comments with respect to Rearrangements to the issue of compliance with applicable Utility Standards as currently established. Utility agrees that during the Final Design stage, it shall not raise any new issues, or make any comments that are inconsistent with its comments (or lack of comment) on earlier submittals, or with any changes thereto agreed to by

Utility and Authority. Utility's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with (a) the most recent previous submittal, modified as appropriate to respond to Utility comments on such submittal and to reflect any subsequent changes agreed to by Utility and Authority, or (b) earlier submittals which have been approved (or deemed complete and approved) by Utility. Utility shall have the right to make new comments on any material changes from previous submittals

D. Utility recognizes that time is of the essence for all Transit Projects, and that certain Transit Projects (whether procured on a D/B basis, a D/B/B basis, or on any other basis) may involve Conditional Design Submittals by Authority's consultants or contractors to facilitate early construction of components of a Rearrangement (or elements thereof) prior to completion and approval of Final Design therefor. Each Conditional Design Submittal will identify the particular components or elements as to which Utility's review and consent to early construction by Authority's contractors is being requested. Utility agrees to review and consent to early construction (subject to the timing and other requirements of this Agreement) for all such Conditional Design Submittals in order to facilitate such early construction. Utility's comments on Conditional Design Submittals shall identify any aspects of the identified components or elements that do not conform to applicable Utility Standards, based on the information provided. Notwithstanding anything herein to the contrary, no matter which party is responsible for the costs of a Rearrangement, if Utility is required to construct based on a Conditional Design and any further construction, reconstruction or Rearrangement is necessary that would not have been necessary had construction been based on a Final Design, Authority shall reimburse Utility for all appropriate costs of such construction, reconstruction or Rearrangement.

7. Article 2, Section 2.4 of the Original Agreement shall be deleted and replaced with the following:

2.4 Design Requirements and Criteria; Interpretation and Application of Utility Standards - Rearrangement of Utility's Conflicting Facilities shall conform to Utility Standards applicable to such Rearrangements. With respect to both Design and construction, in interpreting applicable Utility Standards, and in exercising any discretion granted to Utility staff by applicable Utility Standards, Utility shall make such interpretations and exercise such discretion in such a manner as to impose the minimum requirements necessary to comply with applicable law. Any Design or construction issues affecting Rearrangements which are not addressed by applicable Utility Standards shall be resolved in such a manner as to impose the minimum requirements necessary to make a Replacement Facility the equivalent (in terms of) of the Conflicting Facility which it replaces and to otherwise minimize Rearrangement work while complying with applicable law. Where field conditions require other than standard practices to be used, the Utility may utilize reasonable special designs. Such reasonable special designs shall be submitted by the Utility to Authority for approval prior to construction.

8. The following shall be added to the end of existing Article 2, Section 2.5 of the Original Agreement:

Except where such changes are required to accommodate different site conditions, Authority shall have no obligation to consent to or approve any such requested changes which will (a) necessitate resubmittal of Design to Utility, (b) delay construction of the subject Transit Project or any portion thereof, or (c) increase the cost of construction of either the Rearrangement or the subject Transit Project. The increased cost, if any, attributable to changes in approved plans or specifications requested by Utility and approved by Authority shall be borne by Utility; however, changes required by different site conditions shall be borne by the party responsible to pay for the approved construction.

9. The following sentence shall be added to the end of Article 5, Section 5.1(a):

The Utility shall make its best efforts to comply with the construction start and completion dates established in the Work Order for each Rearrangement.

10. The following shall be added to Article 5, Section 5.1:

(g) The Authority may include detailed environmental controls in the Work Order, tailored to the specific worksite.

11. The following shall be added after the first sentence of Article 5, Section 5.2:

The Authority shall determine an appropriate contracting methodology for executing a Rearrangement and shall describe this in the Work Order.

12. The following shall be added to Article 6 as a new Section 6.3

6.3 Conditional Design Inspection - The Parties recognize that the use of Conditional Design Submittals might result in Design or Construction of Rearrangements (or components thereof) that are non-conforming to applicable Utility Standards. Authority may only begin potentially non-conforming work on Conditional Design Construction, not Final Design Construction. If, upon Utility's inspection of any completed Rearrangement (or any component thereof) that was Constructed pursuant to this Article 6, Utility determines that such facility or component does not conform to applicable Utility Standards, then Utility will provide verbal notice of nonconformance to the Authority Representative as well as to staff (as designated by the Representative) within 24 hours of such inspection, followed by a written nonconformance notice to the Representative within 48 hours after making such determination. Such written notice shall include an explanation of Utility's desired resolution. Utility's inspection and verbal notice may occur at any stage of Construction and Utility's right to give notice of nonconformance shall not be waived until Utility inspects such Construction at a point where any such nonconformance is obvious. Upon completion of such Construction Authority shall notify Utility that such Construction shall be inspected by Utility if Utility has not already inspected such Construction. Work shall not be stopped as a result of any

such nonconformance unless otherwise determined by Authority. If a disagreement arises between Utility and Authority with respect to a Design issue or if Authority receives a notice of nonconformance, the parties shall meet and confer within 5 working days in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute prior to proceeding with dispute resolution described in Article 12, Section 12.2. Utility's failure to provide either timely verbal or timely written notice of a claimed nonconformance in accordance with this Article shall waive any further right to object thereto.

13. Article 11.4 shall be deleted and replaced with the following:

11.4 Procedures for Utility billings to Authority – The parties agree that the following procedures will be observed for submission of monthly billings by Utility to Authority on a progress basis for work performed by Utility under a specific Work Order. Utility shall maintain separate accounting records for each Work Order authorized by the Authority.

(a) Utility shall submit to the Authority, within thirty (30) days after the end of each month, a project labor report identifying by task both Utility staff (and applicable consultant) hours charged for administrative, design, inspection and management services and Utility direct field labor.

(b) Following the commencement of a specific Rearrangement or other work under a given Work Order, Utility's billings (in an electronic format where possible) shall be submitted to the Authority Representative within 60 days of the monthly period when the Work was performed. This billing shall specify all costs incurred for that billing period including copies of invoices and other cost data. Labor time sheets including clear identification tying MCI's project number to the Authority's Work Order number and Project title shall be maintained for audit on file in Utility's Accounting Center. Utility shall provide a full description of any labor charges during the billing period that were not identified in the project labor report, if requested by the Authority, in order to resolve any

questionable Utility charges. Each billing shall be noted as either in-progress or as final and shall include a certification that the charges were appropriate and necessary to performance of the referenced Work Order and have not previously been billed or paid. The final billing, with a recapitulation of prior progress billings and a notation that all work covered by a given Work Order has been performed, shall be submitted to Authority within one hundred twenty (120) days after completion and acceptance of the work covered by the Work Order. Unless both parties agree on an extension of time for billing submittals, costs not billed before the end of said 120-day period shall be waived.

14. **A new Article 14 shall be added to the Original Agreement as follows:**

ARTICLE 14

GENERAL

14.1 Duration of Agreement - The Original Agreement's term commenced on February 24, 1984. The Agreement shall terminate on June 30, 2016 ("Initial Term"). This Agreement and all amendments shall automatically be renewed for consecutive one year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such day, unless any party provides written notice of termination to the others no later than ninety (90) days prior to the end of any term (including the Initial Term).

15. **A new Article 15 shall be added to the Original Agreement as follows:**

ARTICLE 15

Hazardous Materials and Protected Materials

15.1 Scope - The responsibilities of the parties with respect to the remediation of Hazardous Materials or Protected Materials discovered during, or

which require protective, managerial, custodial or remedial action as a result of, the Rearrangement of Utility Facilities to accommodate a Transit Project shall be governed by applicable law, except as otherwise provided in this Article 15.

15.2 Utility Environmental Representations - Utility represents and warrants to Authority that, to the best of Utility's knowledge, there has not been a material release of Hazardous Materials at, on, or under the existing Utility Facilities. Utility shall be responsible for, and shall indemnify, defend and hold harmless Authority, its respective governing board, officers, directors, employees, authorized agents, engineers, contractors and subcontractors, and their respective successors and assigns, from and against any and all claims, liabilities, losses and/or actions arising out of any breach of Utility's representations and warranties in this Section 15.2.

15.3 Investigation of Sites and Preparation of Environmental Impact Reports

15.3.1 As between Utility and Authority, Authority shall be responsible, at Authority's expense, for the investigation of potential Hazardous Materials sites and Protected Materials sites within the area that would directly impact construction of a Transit Project or a Rearrangement of Utility Facilities hereunder.

15.3.2 Authority shall, at its sole cost and expense, prepare all environmental impact reports required by local, state or federal law for the construction of a Transit Project or a Rearrangement of Utility Facilities hereunder.

15.4 Responsibility for Notification and/or Remedial or Protective Action

15.4.1 Authority shall provide to Utility as soon as possible, but no later than seven (7) days before Utility commences its construction activities for a Rearrangement, a copy of all environmental impact reports

and soils tests relating to the site of the Rearrangement work and prepared in connection with the Transit Project, and shall disclose to Utility all information of which Authority is aware concerning the existence of any Hazardous Materials and/or Protected Materials at such site. If the information provided reveals the existence of a Hazardous Material or Protected Material in an area in which Utility will be working on a Rearrangement and Authority is required by an Environmental Law or otherwise to take some action with respect to the Hazardous Material or Protected Material, such as containment, cleanup, removal, restoration or other remedial work ("Remedial Work"), Utility shall not commence its Rearrangement work until the required Remedial Work has been completed by Authority.

15.4.2 If, after it commences Rearrangement work, Utility or Authority discovers the existence of a Hazardous Material or Protected Material in, on, or under the site of such work, the party shall immediately suspend its work and notify the other party of its discovery. Authority shall promptly determine if any Remedial Work is reasonably necessary or required by any Environmental Law or other applicable law. If any Remedial Work is reasonably necessary or required by any Environmental Law or other applicable law, Authority shall promptly commence, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. Utility shall not continue its Rearrangement work until the required Remedial Work has been completed by Authority.

15.4.3 Authority shall make any required notifications to federal, state and/or local agency(ies) in accordance with applicable law.

15.4.4 Authority shall perform the Remedial Work required pursuant to Sections 15.4.1 and 15.4.2 at its sole cost and expense, except that Utility shall be responsible for such costs and expenses (a) to the extent that the actions or omissions of Utility, its employees, contractors

or agents contributed to or caused the Hazardous Materials giving rise to a remediation requirement, (b) Utility is responsible for such costs pursuant to applicable law, and/or (c) as otherwise provided in Section 15.2. Any costs incurred by any party for which another party is responsible pursuant to this Article 15 may be billed and collected as reimbursable costs pursuant to the applicable provisions of this Agreement.

15.4.5 Nothing contained in this Section 15.4 shall be deemed to obligate the Parties to undertake or pay for the remediation of any Hazardous Materials or protection of any Protected Materials or to undertake any other action with respect to Hazardous Materials or Protected Materials, which is not legally required under Environmental Laws or other applicable laws in order to proceed with a Transit Project or the Rearrangement of Utility Facilities hereunder. Moreover, nothing herein shall be deemed to prohibit any party from collecting some or all of the costs of Remedial Work for which it is responsible hereunder from other potentially responsible parties.

16. A new Article 16 shall be added to the Original Agreement as follows:

ARTICLE 16

Indemnity and Insurance

16.1 Indemnification by Utility

Utility agrees to indemnify, protect, defend and save harmless Authority, its members, officers, employees, from and against any and all liability, expenses (including defense costs and legal fees), claims, damages, 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 Utility's performance hereunder ("Claims"), except to the extent any such Claims were caused by Authority.

16.2 Indemnification by Authority

Authority shall indemnify, protect, defend and save harmless Utility, and its officers, employees, authorized agents, from and against any and all liability, expenses (including 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 Authority's performance hereunder ("Claims"), except to the extent any such Claims were caused by Utility.

16.3 Insurance General Requirements

Any Design Contract, Construction Contract or Design/Build Contract entered into by Authority or Utility in connection with a Rearrangement shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement (using the 1985 edition of form CG-20-10) to each policy of general or automobile liability insurance that names as additional insured to such policy (not subject to any premiums or assessments) Utility and Authority and their respective directors, officers, employees and authorized agents, as well as such other additional insured as either Party shall reasonably require. The parties referred to in the previous sentence are collectively referred to herein as the "Additional Insured Group." If Utility is itself performing work (including, without limitation, design or inspection by its own forces), Utility shall itself comply with requirement of this Article 16. The Parties shall determine based on the indicated scope of each Work Order, the required insurance coverage, liability amounts and the Party responsible for payment of this insurance and include this within each Work Order. A Certificate evidencing the required coverage shall be provided directly by the insurer to Utility and Authority, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to Authority and Utility. Utility recognizes and agrees that all or part of such insurance can be provided by Authority through an owner-controller insurance program.

17. The parties acknowledge that the Original Agreement, as hereby amended, remains in full force and effect in accordance with its terms.

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

“Utility”

MCI METRO ACCESS TRANSMISSION SERVICES LLC

By:  _____

Name: Marty Hersh
Title: Senior Manager OSP Services

“Authority”

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

ROGER SNOBLE
Chief Executive Officer

APPROVED AS TO FORM:

Office of County Counsel

By: _____

“Utility”

MCI WORLDCOM NETWORK SERVICES, INC.

By:  _____

Name: Steve Stull

Title: Agreement Specialists

