



Expo

Exposition Metro Line
Construction Authority

707 Wilshire Boulevard
34th Floor
Los Angeles, CA 90017

213.243.5500
BuildExpo.org

5.f

DATE: July 5, 2007

TO: BOARD OF DIRECTORS

**FROM: RICHARD D. THORPE
CHIEF EXECUTIVE OFFICER**

**ACTION: APPROVE MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN TIME WARNER CABLE AND THE EXPOSITION
METRO LINE CONSTRUCTION AUTHORITY**

RECOMMENDATION

1. Approve the attached Memorandum of Understanding (MOU) between Time Warner Cable (Utility) and the Exposition Metro Line Construction Authority (Authority); and
2. Authorize the Chief Executive Officer (CEO) to execute the MOU or substantially the same on behalf of the Authority.

SUMMARY

Support of the design and construction of the Expo LRT Project (Project) by Utility is both necessary and essential for completion of the Project in accordance with the Board adopted schedule. The proposed MOU describes the roles, responsibilities and obligations of the two parties during the design and construction of the Project.

DISCUSSION

To date, Utility staff has provided design and construction support services in good faith, without an existing agreement in place between Utility and the Authority. Authority representatives have met with Utility staff and determined that the terms and conditions of the attached MOU will address the specific needs of the Project and equitably represents the interests of both parties.

FINANCIAL IMPACT

There is no financial impact by this proposed action; the MOU does not obligate the expenditure of funds.

NEXT STEPS

Subject to Board approval of this action, the CEO will work with Utility's designated representative to complete the execution of the MOU.

ATTACHMENT(S)

- A. Memorandum of Understanding
- B. Exhibit 1

MEMORANDUM OF UNDERSTANDING

BETWEEN

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

AND

TIME WARNER CABLE

WHEREAS, this MEMORANDUM OF UNDERSTANDING (“MOU” or “Agreement”), for the purpose of providing engineering and construction services to facilitate the design-build implementation of the Exposition Light Rail Transit Project (“Project”), is made and entered into this ____ day of _____, 2007 (“Effective Date”) between the EXPOSITION METRO LINE CONSTRUCTION AUTHORITY (“Authority”) and TIME WARNER CABLE (“Utility”). The Authority and Utility are referred to collectively as the “Parties” and each individually as a “Party”.

WHEREAS, the Authority is a public entity created by the California State Legislature pursuant to Section 132600, et. seq. of the California Public Utilities Code for the exclusive purpose of completing the design and construction of the Project, which is defined as the proposed Exposition Light Rail Transit (“ELRT”) line to traverse the City of Los Angeles, extending from the existing 7th/Metro Center station in downtown Los Angeles southward to Exposition Park, and then westward along Exposition Boulevard to Downtown Santa Monica. The ELRT line will operate in a dual track configuration and be electrically powered, receiving its electric power from overhead power lines within the street; the design concept is for high-level center and side platform stations. Phase I of the Project will be from the 7th/Metro Center station to Venice Boulevard/ Robertson station. Phase II of the Project will be from Venice Boulevard/ Robertson station to downtown Santa Monica. Phase I will have an approximately 9.6-mile line, 10 stations consisting of two existing stations and eight new stations (two of which are aerial), and a bicycle facility; and

WHEREAS, the Project necessitates the rearrangement of certain Utility Facilities that (i) are located in the railway right-of-way (“Railway Right-of-Way”) or (ii) are located in public right-of-way (“Public Right-of-Way”). The Authority and Utility intend by this Agreement to provide design, review, coordination and construction services to facilitate the design-build implementation of the Project, when a rearrangement of Utility Facilities is necessary; and

NOW THEREFORE, in consideration of the above and the terms and conditions herein, the Parties agree to the conditions outlined in this Agreement as follows:

ARTICLE 1 – GENERAL PROVISIONS

1.1 This Agreement addresses the Project described in the first whereas clause above. Among other things, this Agreement specifies (a) the procedures which the Authority and Utility will follow in identifying, planning, designing and affecting all Rearrangements of Utility Facilities that are necessary in order for the Authority to complete the Project , and (b) the manner in which the Authority and Utility will be reimbursed for their respective costs of such activities. Both the 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.

1.2 Unless otherwise agreed to by the Parties, and as further described in this Agreement,

(i) If the Utility Facility conflict occurs in the Public Right-of-Way, the Authority shall be responsible for all costs associated with the rearrangement, and

(ii) If the Utility Facility conflict occurs in the Railway Right-of-Way, Utility shall be responsible for all costs associated with the rearrangement.

1.3 This Agreement shall not negate or modify the terms and conditions of (a) any legally binding easements or other use and/or occupancy agreements between the Utility and Authority with respect to the occupancy by Utility Facilities on, or any interest of Utility in, real property owned by or under the operating jurisdiction of the Authority, (b) any such easements or other agreements between the Utility and any former owner of real property now or hereafter owned by the Authority, and to which the Authority has become or hereafter becomes a successor either by assignment or by operation of law, or (c) any such easements or other agreements between the Utility and any other governmental agency with respect to real property owned by or under the operating jurisdiction of such governmental agency, and in which the Authority has a statutory or other right to install Project facilities.

1.4 Each Party shall designate, in a written notice provided to the other Party, an individual to serve as a point of contact for issues related to this Agreement (such individual is referred to herein as that Party's "Representative").

1.5 Definitions

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

1.5.1 Betterment is defined as an upgrade to a Utility Facility, Replacement Facility, or component thereof, requested by Utility and agreed to be Authority (whether constructed by Authority or by Utility or by their respective contractors), which will increase or upgrade the service capacity, capability, appearance, efficiency or function of the existing

Utility Facility, Rearrangement or Replacement Facility over that which was provided by the corresponding Conflicting Facility (“upgrade”).

- 1.5.2 Conflicting Facility is defined as an existing Utility Facility, which Utility and Authority reasonably determine is so situated as to require Rearrangement in order to construct or operate the Project without adversely impacting the operation or maintenance of that Utility Facility.
- 1.5.3 Rearrangement is defined as the work of removal, replacement, restoration, alteration, reconstruction, support or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary, which Utility and/or Authority determine must be rearranged in order to design, build or operate the Project.
- 1.5.4 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.
- 1.5.5 Utility Facility is defined as real or personal property located within or near to the route of the Project, which is under the ownership or jurisdiction of the Utility.

ARTICLE 2 – AUTHORITY RESPONSIBILITIES

2.1 Project Design by Authority. The Authority, through its contractors, shall be responsible for preparation of detailed design and construction of all facilities associated with the Project (“Project Designs”). Project Designs for proposed facilities which impact or interface with Utility Facilities shall be submitted to Utility for review and approval prior to construction. (For purposes of this paragraph, the term "facilities" in the phrase "facilities associated with the Project" does not refer to facilities of Utility.)

2.2 The Authority may make material changes to Project Designs previously approved by the Utility prior to or during the progress of construction of the Project only with written concurrence of the Utility.

2.3 The Authority shall issue work orders in accordance with Article 4 (“Work Orders”) to the Utility to perform work described under Article 3. Payment for such services shall be in accordance with Article 4.

2.4 Rearrangement Design by Authority. If the Authority and Utility mutually agree that the Authority shall be responsible for designing the Rearrangement necessitated by the Project (“Rearrangement Designs”), the Authority shall issue Work Orders for the Utility to review plans and specifications as required, and the following procedures shall govern:

2.4.1. Coordination of design and the development of the design plans and specifications for the Rearrangement Design 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 by the Utility to the Authority's contractors in accordance with Section 2.6.

2.4.2. The Authority or its contractors shall submit its draft Rearrangement Design for each Rearrangement at the preliminary engineering stage, the design development stage, and the final design stage for Utility review and approval; provided, however, that the schedule for such submittals and responses shall conform to the following requirements:

(a) Within fifteen (15) business days after receipt of up to three (3) Rearrangement Design submittals, (i) the Utility shall inform the Authority whether the submittal is sufficiently complete for Utility review purposes, and (ii) if not sufficiently complete, the Utility shall so notify the Authority, and return the submittal to the Authority, together with an identification of those portions that are not sufficiently complete, and a description of the missing information listing the deficiencies. This means, for example, that if the Utility receives three (3) Rearrangement Design submittals at one time, it shall have a total of fifteen (15) business days to (i) inform the Authority whether the submittal is sufficiently complete for Utility review purposes, and (ii) if not sufficiently complete, notify the Authority, or return the submittal to the 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 the Authority within the time frames set forth herein, the submittal(s) shall be deemed complete and acceptable for review purposes. If the Utility receives more than three (3) Rearrangement Design submittals at one time, the Parties will mutually agree upon a commercially reasonable amount of time for review. For purposes of this Section 2.4.2(a), the determination as to whether a Rearrangement 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) calendar days after receipt of each design submittal, Utility shall review and approve the submittal or transmit its comments to the 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 2.4.2 also will apply to any re-submittal of a Rearrangement Design by the Authority, whether in response to a Utility notice or return of an incomplete submittal, or in response to substantive Utility comments.

2.4.3. Utility's approval of the final Rearrangement 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 the Authority, or (b) earlier submittals which have been approved by Utility. However, Utility shall have the right to make new comments on any material changes from previous submittals.

2.5 Construction of Rearrangements by Authority

2.5.1. If agreed by the Parties pursuant to Section 3.2 that the Authority shall perform the construction of a Rearrangement in accordance with a Rearrangement Design, the Authority may advertise, award, contract with its design-build contractor and administer the construction of such Rearrangement. Utility agrees to coordinate its efforts and cooperate with the Authority's contractors performing construction, as reasonably requested by the Authority or such contractor.

2.5.2. The Authority shall be responsible for all claims and stop notices or mechanic's liens filed by the Authority's contractor, sub-contractors, and material and labor providers for work performed on Utility Facilities.

2.5.3. The Authority shall notify Utility at least fifteen (15) business days prior to commencing the construction for each Rearrangement so that Utility may make arrangements for such inspection and recordkeeping as Utility may desire or as may be required pursuant hereto.

2.6 Delegation of Authority Duties to Contractors. Without limiting the Authority's right to delegate other tasks hereunder to its contractors, the Authority shall have the right to delegate to its contractors the task of coordinating directly with Utility with respect to design matters, including without limitation, the submittal of design for Utility review and discussion of Utility comments. Upon its entry into a contract with a contractor to which the Authority intends to make such a delegation, the Authority shall notify Utility in writing as to (a) the name of such contractor (and relevant contact information) and (b) the tasks hereunder that have been delegated to such contractor.

ARTICLE 3 – UTILITY RESPONSIBILITIES

3.1 Rearrangement Design by Utility. Unless the Authority and Utility agree that the Authority shall design a particular Rearrangement pursuant to Section 2.4, Utility shall prepare each Rearrangement Design. Prior to commencing design, Utility shall submit a Construction Authorization Form in the form attached hereto as Exhibit 1 ("Construction Authorization Form") for design hours and upon Authority approval of same, and Utility's receipt of a Work Order for design from the Authority along with the related project plans, Utility shall proceed with design of such Rearrangement in accordance with the following:

3.1.1. Utility shall diligently perform its design work in conformance with the Project Design schedule for the Rearrangement that is mutually agreed upon by the Authority and Utility, subject to Section 2.4, and Utility shall coordinate throughout design with the Authority as is necessary to develop plans satisfactory to both the Authority and Utility for each Rearrangement, subject to the requirements of this Agreement. The schedule for Utility's completion of design, coordination requirements, review procedures, and related provisions shall be included as attachments to the Work Order, which shall also include the not-to-exceed cost of completing the design of the specific Rearrangements based upon the Construction Authorization Form.

3.1.2. Utility shall prepare each Rearrangement Design, which shall include a complete set of design plans and specifications for each Rearrangement, together with (a) Utility's itemized estimate of the total cost of work, and (b) an estimate of the time needed to perform the required Rearrangement construction. During Utility's design process for each Rearrangement, the Authority shall have the right to review and comment on the plans and specifications as well as on the cost and time estimates in each Rearrangement Design. In order to facilitate such review, Utility shall submit to the Authority, its draft Rearrangement Design for each Rearrangement at the completion of the preliminary engineering stage and the design development stage; provided, however, that the Authority shall provide any comments on such draft Rearrangement Design to Utility within thirty (30) days after receipt. The final draft Rearrangement Design for each Rearrangement, including time and cost estimates, shall be subject to the Authority's written approval. Unless otherwise expressly provided for herein, Utility may not make material changes to the plans and specifications prior to or during the progress of construction, except with prior written concurrence of the Authority. The Authority's review and approval of any Rearrangement Design furnished by Utility shall be solely for purposes of assessing compatibility of the rearranged Utility Facilities with the Project, coordination with the Authority's work on the Project, and cost issues. The Authority has and undertakes no duty to review Rearrangement Designs for their quality or for the adequacy of rearranged Utility Facilities (as designed) for the purposes for which they are intended to be used.

3.1.3. Utility shall be responsible for errors in and omissions from Rearrangement Designs prepared or provided by Utility, its consultants or contractors.

3.2 Construction of Rearrangements by Utility. Prior to commencing construction, Utility shall submit a Construction Authorization Form for costs associated with the construction of the Rearrangement by the Utility, and upon Authority approval of same, the Authority will issue a Work Order to the Utility. Utility shall perform (either directly or through its contractors), pursuant to an approved Work Order, all construction for each Rearrangement, unless, during the process of design engineering, the Authority and Utility mutually agree that the Authority shall perform all or part of the construction for a Rearrangement. The Party performing construction may perform such construction either prior to construction of the Project, concurrently with such construction, or through a combination of said alternatives, as mutually agreed by the Parties.

3.3 Delegation of Utility Duties to Contractors. Utility shall have the right to delegate its tasks hereunder to its contractors. Upon its entry into a contract with a contractor to which Utility intends to make such a delegation, Utility shall notify the Authority in writing as to (a) the name of such contractor (and relevant contact information) and (b) the tasks hereunder that have been delegated to such contractor.

ARTICLE 4 – WORK ORDER AND BILLINGS

4.1 All work performed by Utility under this Agreement shall be through a Work Order process. Each Work Order shall specify the work to be performed and any materials and equipment to be acquired, the estimated cost for the work authorized and the estimated starting and finishing dates for the work so authorized. Each Work Order

issued to Utility will authorize both direct and indirect costs, required for the performance of tasks and/or the purchase of materials and equipment required under the terms of this Agreement.

4.2 The Parties agree that Utility has no obligation to perform any of the activities described in this Agreement prior to the issuance of a properly conforming and fully executed Work Order.

4.3 Within ten (10) business days after receipt of a request for services, Utility will provide a cost estimate to perform the work required. The Authority and the Utility will agree through negotiation on the cost estimate for the work which will form the basis for the Work Order. Unless the Parties agree to perform the work for a fixed price lump sum amount, all work will be performed on a cost reimbursable basis in accordance with Section 4.5 of this Agreement.

4.4 Utility, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the Project. Utility's contractor's and subcontractor's accounting systems shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Utility, its contractors and subcontractors connected with performance under this Agreement, shall be maintained for a minimum of three years from the date of final payment to Utility under these provisions and shall be held open to inspection and audit by representatives of the Authority, the Bureau of State Audits, and auditors of the Federal Government. Copies thereof will be furnished upon request. In conducting an audit of the costs claimed under these provisions, Authority will rely to the maximum extent possible on any prior audit of Utility pursuant to the provisions of federal and state laws. In the absence of such an audit, any acceptable audit work performed by Utility's external and internal auditors and/or federal auditors will be relied upon and used by the Authority when planning and conducting additional audits. As between Utility and the Authority, all costs associated with any audits under this Section 4.4 shall be the sole responsibility of the Authority. To the extent permitted by law, all information will be kept in strict confidence and will be used solely for assessing Utility's performance under this Agreement.

4.5 Utility, its contractors and subcontractors agree to comply with Federal procedures in accordance with the following:

a. Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments.

b. 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

c. Cost Principles and Procedures, CFR 48, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of individual items of cost.

4.6 Any costs for which Utility has received payment that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87, CFR 48, Chapter 1, Part 31.000 et seq., or 49 CFR, Part 18, are to be repaid to the Authority by Utility.

4.7 For the purpose of determining compliance with Public Contract Code Section 10115, et seq., and Title 21, California Code of Regulations, Section 2500, et seq., when applicable, and other matters connected with the performance of Utility's contracts with third parties pursuant to Government Code Section 8546.7, Utility's contractors, subcontractors, and Utility shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts including, but not limited to, the costs of administering the various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under such contract. The Authority, the Bureau of State Audits, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents that are pertinent to the Agreement or Project for audits, examinations, excerpts, and transactions and copies thereof shall be furnished if requested.

4.8 Utility billings shall be submitted to the Authority Representative within sixty (60) days of the end of the monthly period when the work was performed and shall be marked to indicate whether the work is in-progress or final and shall include supporting information sufficient to determine conformance with the above government contracting requirements. Billings will be paid by the Authority within thirty (30) calendar days following receipt by the Authority.

ARTICLE 5 – BETTERMENTS

Utility shall not charge Authority for Betterments. In the event of a Betterment, the cost of the Betterment shall be determined by Utility as follows: Betterment cost shall be based upon estimated additional cost to construct the Rearrangement with the Betterment, which shall be determined as the sum of the estimated cost of the design and construction of the Rearrangement with the Betterment less the estimated cost of design and construction of the Rearrangement without the Betterment, using the unit price schedules used by the Utility in its usual estimating practices and agreed to by the Parties (“Betterment Cost”). Utility shall not include Betterment Costs in the cost estimate provided to Authority under Section 4.3.

ARTICLE 6 – PERMITS

Notwithstanding anything to the contrary in Section 1.2, the Authority shall be responsible for obtaining all necessary licenses and permits required by municipal, county and state authorities for the Project and any Rearrangement of Utility Facilities, including all costs associated therewith. Utility shall use reasonable efforts (the cost of which shall be considered a cost hereunder) to assist the Authority in securing such permits, as reasonably requested by the Authority. Each Party shall comply with the terms of all applicable permits in carrying out its assigned work hereunder.

ARTICLE 7 – INDEMNIFICATION

7.1 The Authority agrees to indemnify, defend and hold harmless Utility, its officers, agents and employees from and against any and all third party 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, and property damage) arising from or connected with the Authority's performance hereunder.

7.2 Utility agrees to indemnify, defend and hold harmless the Authority, its members, agents, officers and employees from and against any and all third party 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 and property damage) arising from or connected with Utility's performance hereunder.

ARTICLE 8 - RESOLUTION OF DISPUTES

8.1 The provisions of this Section 8.1 apply where work hereunder is not stopped in connection with a claim or dispute between Utility and Authority. If work is stopped in connection with such a claim or dispute, the provisions of Section 8.2 shall apply instead.

8.1.1 In the event of a claim or dispute arising out of this Agreement, both Parties shall make good faith efforts to resolve the dispute through negotiation. Failing a resolution of the dispute through these good faith efforts, in the absence of good faith efforts to resolve the dispute, 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) calendar days after delivery of such demand, or within such extended period of time to which they agree in writing, attempt to agree upon a mutually satisfactory "neutral arbitrator."

8.1.2 If the Parties are unable to select a neutral arbitrator within the time designated in Section 8.1.1 a "neutral arbitrator" shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure.

8.1.3 The arbitrator's award shall be supported by law and substantial evidence and the arbitrator shall issue written findings of fact and conclusions of law. An award that does not 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.

8.2 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 claim or 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 (5) calendar days after being selected. Notwithstanding Sections 1282.2(b)

and 1286.2(a)(5) of the California Code of Civil Procedure (regarding postponement of the hearing), 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, and if it was not 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.

8.3 No person shall act as 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.

8.4 If the Parties agree upon and select a mutually satisfactory arbitrator in accordance with Section 8.1.1, they shall initially equally share the expenses and fees of that arbitrator. If the Parties are unable to agree upon a mutually satisfactory arbitrator in accordance with Section 8.1.1, each Party shall initially 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. However, the prevailing Party in such proceeding shall be entitled to recover, in addition to reasonable attorneys' fees and all other costs, its cost of the arbitrators as an item of recoverable costs. If either Party refuses to pay its share of the costs of the proceeding, at the time(s) required, the other Party may do so, in which event that Party will be entitled to recover (or offset) the amount advanced, with interest at the maximum rate permitted by law, even if that Party is not the prevailing Party. The arbitrators shall include such costs in the award.

8.5 Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including paying undisputed billings, and such continuation of efforts and payment of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power (a) of any Party under this Agreement or any other agreement or Work Orders executed pursuant hereto, or (b) otherwise available pursuant to applicable law.

The Parties acknowledge and agree that delays in work may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that unreasonably threatens to delay Project construction.

8.6 Notwithstanding a Party's seeking or securing injunctive relief, it shall be entitled to all consequential damages otherwise available, including but not limited to those resulting from delays in performance under this Agreement.

8.7 Each Party will take any action required of it in order to implement (a) an agreed-upon resolution between the Parties, or (b) an arbitration award issued pursuant to this Article 8.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 Termination of Work. The Authority and the Utility may terminate any Work Order at any time. However, upon termination by the Authority, the Authority will reimburse the Utility for any incurred costs in accordance with this Agreement.

9.2 Approvals. When this Agreement calls for approval, consent, permission, satisfaction, agreement or authorization by any Party, such approval, consent, permission, satisfaction, agreement or authorization shall not be unreasonably withheld. The Parties agree to execute such further documents, agreements, instruments and notices as may be reasonably necessary or appropriate to effectuate the transactions contemplated by this Agreement.

9.3 Assignment; Survival of Rights. No Party shall have the right to assign any of its rights, interests or obligations under this Agreement, without the consent of the other Party, except that Utility may assign this Agreement without such consent (i) to a party that purchases all or substantially all of its assets or (ii) to any of its affiliates. Any attempted assignment or other transfer in violation of the foregoing shall be void and of no force or effect. This Agreement shall be binding upon, and, as to permitted successors or permitted assigns, inure to the benefit of, the Utility and the Authority and their respective successors in all cases whether by merger, operation of law or otherwise.

9.4 Severability. In the event any Section, or any sentence, clause or phrase within any Section, is declared by a court of competent jurisdiction to be void or unenforceable, such sentence, clause, phrase or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

9.5 Notification or Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if personally delivered, transmitted by facsimile (with mechanical confirmation of transmission), or deposited in the United States mail, registered or certified, postage prepaid, addressed to the Parties' addresses set forth below. Notices given in the manner provided for in this Article shall be deemed effective on the third day following deposit in the mail or on the day of transmission or delivery if given by facsimile or by hand. Notices must be addressed to the Parties hereto at the following addresses, unless the same shall have been changed by notice in accordance herewith:

If to Utility:

Time Warner Cable
Los Angeles Metro Division
6357 Arizona Circle
Los Angeles, California 90045

With a copy to:

Time Warner Cable, Inc.
Attn: Contracts Administration
550 N. Continental Blvd., #250
El Segundo, California 90245

With a copy to legal at:

Time Warner Cable, Inc.
Attn: General Counsel
290 Harbor Drive
Stanford, CT 06902
Telephone: (203) 323-0600
Fax: (203) 328-4840

If to the Authority:

Exposition Metro Line Construction Authority
Attn: Mr. Richard D. Thorpe, CEO
707 Wilshire Boulevard, 34th Floor
Los Angeles, California 90017
Fax: (213) 243-5551

9.6 Time of the Essence. Except as otherwise provided herein, time is of the essence in connection with each and every provision of this Agreement.

9.7 Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES (EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING OUT OF THIS AGREEMENT. EXCEPT FOR THE OBLIGATIONS PAYABLE WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN ARTICLE 7, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR BREACH OF THIS AGREEMENT OR OTHERWISE ARISING OUT OF ANY CLAIM RELATING TO THIS AGREEMENT (INCLUDING TORT CLAIMS) SHALL NOT EXCEED THE TOTAL AMOUNT APPROVED ON WORK ORDERS RELATING TO THE SPECIFIC REARRANGEMENT RELATED TO THE BREACH OR CLAIM. THIS SECTION 9.7 APPLIES ONLY TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.

9.8 Duration of Agreement: The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall terminate on December 31, 2012. This Agreement shall automatically be renewed for one (1) year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such date, unless any Party provides written notice of termination to the other no later than sixty (60) calendar days prior to the end of any term (including the Initial Term).

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

“UTILITY”

TIME WARNER CABLE

By: _____

Jeffrey Hirsch
Los Angeles County Metro
Division President

Date: _____

“AUTHORITY”

EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY

By: _____

Richard. D. Thorpe
Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

GENERAL COUNSEL

By: _____

Robert C. Pearman, Jr.
Deputy General Counsel

Date: _____

ATTACHMENT B

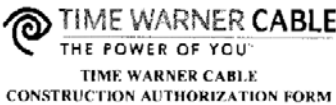


EXHIBIT 1

Supervisor: _____

Date Submitted: _____

Budgeted Project Information (If Budget is "Borrowed" from another Project, Indicate that Project here):						
Project ID	Activity ID	Operating Unit	Business Segment	Functional Area	Resource Category	Resource Sub-Category

Assigned Project Information:				
Project ID	Activity ID	Operating Unit	Business Segment	Functional Area
		1150	31	600

New PA:	Yes
Revision:	No

Project Name: Node Splitting Activity Name: Project ID# - Project Address - City

Project Justification: _____ TCO Date: _____

- New Build (NWBLD)
 Upgrade (UPGRD)
 Replacement (RPLCE)
 Forced Relocated Plant (FRELO)
 Installation (INSTL)
 Commercial New Build (CMBLD)
 Standby Power (STDBY)

Resource Category/Sub-Category of Spending (A)	Resource Task Code					
	Contract Labor	In-House Labor	Materials	Reimbursement	Total	Passings
All Construction Categories:						
A00 Design - Aerial	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	_____
A01 Make Ready - Aerial	_____	_____	_____	_____	_____	_____
A02 Strand & Hardware - Aerial	_____	_____	_____	_____	_____	_____
A03 Splicing & Electronics - Aerial	_____	_____	_____	_____	_____	_____
A04 Fiber Construction - Aerial	_____	_____	_____	_____	_____	_____
A05 Coaxial Construction - Aerial	_____	_____	_____	_____	_____	_____
A06 Capitalized Interest - Aerial	_____	_____	_____	_____	_____	_____
U00 Design - UG	_____	_____	_____	_____	_____	_____
U01 Make Ready - UG	_____	_____	_____	_____	_____	_____
U02 Hardware - UG	_____	_____	_____	_____	_____	_____
U03 Splicing & Electronics - UG	_____	_____	_____	_____	_____	_____
U04 Fiber Construction - UG	_____	_____	_____	_____	_____	_____
U05 Coaxial Construction - UG	_____	_____	_____	_____	_____	_____
U06 Capitalized Interest - UG	_____	_____	_____	_____	_____	_____
Total	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	_____

(A) All amounts should include tax and freight.

Disposals			
Does this project result in Disposal of Assets? Yes ___ No <u>X</u> If Yes, then attach Disposal form.			
Miles to be Retired: _____ Aerial	_____ Underground	Cost/Mile Standard: _____ Aerial	_____ Underground

Approvals:

Signature	Title	Date
_____	Construction Manager	_____
_____	Director of Construction-David Schamer	_____
_____	VP Tech Ops-Mitchell Christopher	_____
_____	Division President-Stephen Pagano	_____
_____	RVP Engineering-Jose Leon	_____
_____	RVP Finance-Oliver Caiza	_____