FREEWAY MASTER CONTRACT
BETWEEN
CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND
MCImetro ACCESS TRANSMISSION SERVICES LLC

PARTIES:

The State of California, acting by and through its Department of Transportation ("Department"), which term "Department" includes its officers, agents, contractors, successors, assigns and other public agencies performing projects in connection with Department's freeway system, and MCImetro Access Transmission Services LLC ("Owner"), which term "Owner" includes its officers, agents, contractors, successors and assigns,

hereby agree effective this 5th day of May, 2006, as follows:

RECITALS:

A. Owner owns, operates or maintains, in the State of California, Utility Facilities as defined in Section 700 of the Streets and Highways Code. Certain of Owner's Utility Facilities may be operated under regulations of the California Public Utilities Commission.

B. Department has various Freeway Projects throughout the State of California and from time to time these projects require the Relocation of Owner's Utility Facilities.

C. The cost of such Relocation is presently apportioned between Department and Owner as provided for in the statutes of the State of California and/or existing Master Agreements.

D. Pursuant to Section 707.5 of the Streets and Highways Code, Department and Owner desire to enter into a contract apportioning the obligations and costs of the above-referenced Relocations to be borne by each party.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Freeway Master Contract and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Department and Owner agree as follows:

1. This Freeway Master Contract ("Master Contract"), in accordance with the provisions of Section 707.5 of the Streets and Highways Code ("S&H Code") shall govern exclusively the determination of the obligations and costs to be borne by Department and Owner in regard to Utility Facility work described herein in lieu of determination under the current provisions of Sections 702 to 707, inclusive, of the S&H Code and all other laws, and prior contracts and agreements which would be applicable to the determination of liability or the obligation for costs incurred in connection with this work. This Master Contract shall apply throughout the State of California to all of Department's Freeway Projects.

2. As used in this Master Contract, the following terms have the following meanings:

(A) "Freeway" means:

1. a highway, together with any designated frontage roads, under the jurisdiction of the Department in respect to which, and along the right-of-way of which, the owners of abutting lands have no right or easement of access to or from their abutting lands or only limited or restricted right or easement of such access; or

2. a like contemplated highway together with any designated frontage roads, where the California Transportation Commission has selected, adopted and determined the location of the same and declared the same to be a State freeway, and Department has approved a right-of-way map in conjunction with its property appraisal, which map delineates the limited or restricted right or easement of access. Said maps shall be available for inspection by Owner.

(B) "Freeway Project" means a project in connection with Department's freeway system by Department or others which includes, but is not limited to, work occasioned by and of benefit to the construction, improvement, maintenance, operation or use of a freeway, and which may include such work within the right-of-way of a freeway or any other public road or on other real property.

(C) "Notice to Owner" means a formal written demand as required by law and as defined in Section 673 of the S&H Code.

(D) "Relocation" means removal, relocation, protection or any other rearrangement of Owner's Utility Facility as ordered and approved by Department to accommodate Department's Freeway Project. Relocation shall include, but not be limited to: preparation and submission by Owner and approval by Department of relocation plans or drawings sufficiently engineered to allow construction of the ordered Relocation, and a detailed estimate by Owner of the actual and necessary cost of the ordered Relocation.

(E) "Wasted Work" means design or construction work performed by Owner, upon written direction from the Department, for a Relocation rendered useless or unnecessary as a result of the Department's cancellation and/or scope of changes as agreed by both parties of the specific Freeway Project.

(F) "Betterment" means the difference in cost between the intended Relocation of Owner's Utility Facility proposed and submitted by Owner for Department's approval and a Relocation which would provide the Owner with equivalent substitute Utility Facilities for those Utility Facilities requiring Relocation to accommodate Department's project. As employed herein, betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, or regulatory requirement.

(G) "Private Right-of-Way of Owner" means a property right held by Owner in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or fully executed and conveying a permanent property right for the Utility Facility in a defined area of real property, or a defined area within the State highway right-of-way that is subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA)

(H) "Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

3. The work to be performed under this Master Contract shall be all work necessary to accomplish Relocation of Owner's existing Utility Facilities as necessitated by Department's Freeway Project.

4. All work under this Master Contract shall be preceded by the issuance of a written Notice to Owner by Department.

5. The cost of all work to complete the Relocation of Owner's existing Utility Facilities necessitated by Department's Freeway Project shall be calculated pursuant to the provisions of Paragraph 6 and shall be allocated as follows:

   (A) Department shall pay one hundred percent (100%) of the cost of Relocation of Owner's existing facilities located in a Private Right-of-Way of Owner, upon delivery by Owner to Department a copy of such Private Right-of-Way concurrent with timely submission of Owner's relocation plan to Department.

   (B) Owner shall pay one hundred percent (100%) of the cost of Relocation of Owner's Utility Facilities originally installed within State Right-of-Way pursuant to Department's Encroachment Permit and without benefit of a valid franchise.

   (C) In all other circumstances, including but not limited to Owner's existing Utility Facilities in place pursuant to a valid franchise, statute, or non-perfected claim of prescription, the cost of Relocation of Owner's existing Utility Facilities shall be borne equally by Department and Owner.

6. Cost of Relocation includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Utility Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Utility Facility right-of-way involved in the Relocation, except:

   (A) In any case in which Department is required under the provisions of this Master Contract to pay its share of the cost of Relocation of any Utility Facility, the Department shall be entitled to credits as follows:

      1. The amount of any betterment to the Utility Facility resulting from such Relocation.

2. The salvage value of any materials or parts salvaged and retained by Owner.

3. If a new Utility Facility or portion thereof is constructed to accomplish such Relocation, an amount bearing the same proportion to the original cost of the displaced facility or portion thereof as its age bears to its normal expected life.

$$\textbf{Credit} = \frac{\textbf{Age of facility}}{\textbf{Normal expected life}} \times \textbf{Original cost}$$

(B) A credit shall not be allowed against any portion of the cost that is otherwise chargeable to Owner.

(C) A credit allowance for age shall not be applied to publicly-owned sewers.

7. This Master Contract does not apply to:

(A) The positive location of underground Utility Facilities.

(B) Buildings or any Utility Facilities located therein or thereon, whether or not devoted to public use.

(C) Telecommunications facilities, including, but not limited to, wireless antennae and related equipment and/or fiber optic lines, installed pursuant to an agreement with specific provisions relating to the removal or relocation of the telecommunication facilities. Such an agreement includes, but is not limited to, the Master License Agreement for Cellular and PCS Carriers and any agreement or permit for the longitudinal use of controlled access right-of-way facilities such as freeways, expressways and bridges.

(D) "Service" utility facilities for which Department is the regularly billed sole customer for the commodity provided, or as defined by California Public Utilities Commission.

8. Where Owner is the owner of a part of, or of a present undivided part interest in, any Utility Facility, this Master Contract shall apply to the extent of such interest.

9. For each Relocation, Department and Owner shall enter into a project specific Utility Agreement setting forth, among other things, the Relocation arrangements between the parties regarding cost apportionment, billing, payment, documentation, documentation retention, and accounting, generally using the standard clauses and form published in Department's current Right-of-Way and Contracts manuals.

10. Upon the issuance of a Notice to Owner, or as otherwise agreed upon in the specific Utility Agreement, the Owner shall diligently undertake, or cause to be undertaken, the Relocation of its Utility Facilities in accordance with Department's reasonable schedule.

11. Department will pay, in its entirety, that portion of the cost of the Relocation constituting Wasted Work. The remainder of the cost of that Relocation shall be borne pursuant to the cost allocation provisions defined in Paragraph 5.

12. If Department requires the Relocation within its right-of-way of any Utility Facility more than once during a four-year period, Department shall pay the cost of that second Relocation, and any subsequent additional Relocations of that Utility Facility within such four-year period on any subsequent or additional project.

13. Upon discovery of Hazardous Material in connection with the Relocation, both Owner and Department shall immediately confer to explore all reasonable alternatives and agree on a course of action, and Owner shall immediately reschedule the work to complete the Relocation in accordance with Department's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

    (A) Department will pay, in its entirety, those costs for additional necessary effort undertaken within State's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Owner's existing installation or operation.

    (B) Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside State's right-of-way which are required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the parties pursuant to the hereinabove provisions of Paragraph 5.

    (C) Each party to this Master Contract retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.

14. Whenever Owner's affected Utility Facilities will remain within the existing Private Right-of-Way of Owner, and these Utility Facilities will fall within the right-of-way of a public road under the jurisdiction of the Department, Department and Owner shall jointly execute an agreement for common use of the subject area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner.

15. Whenever Owner's affected Utility Facilities will be relocated from the existing Private Right-of-Way of Owner to a new location that falls outside such existing Private Right-of-Way of Owner, the Department shall convey or cause to be conveyed a new right-of-way for such relocated Utility Facilities as will correspond to the existing Private Right-of-Way of Owner. For such Relocations, the Department shall issue, or cause to be issued, to Owner, without charge to Owner or credit to Department, appropriate replacement rights in the new location mutually acceptable to both Department and Owner for those rights previously held by Owner in its existing Private Right-of-Way. In discharge of Department's obligations under this Paragraph, in the event that the new location falls within the right-of-way of a public road under the jurisdiction of Department, Department and Owner shall jointly execute an agreement for joint use of said new area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner. In consideration for these replacement rights being issued by Department, Owner shall subsequently convey to Department, or its nominee, within Department's Right-of-Way, all of its corresponding right, title and interest within Owner's existing Private Right-of-Way so vacated.

16. If the existing Private Right-of-Way of Owner includes fee title, Department shall acquire from Owner, for just compensation under State law, those property rights required by Department for the public roadway by separate transaction, leaving to Owner those remaining property rights appropriate for the placement and operation of Owner's Utility Facilities in the Private Right-of-Way of Owner.

17. This Master Contract shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties.

18. This Master Contract may be amended, changed or altered by mutual consent of the parties in writing.

19. Either party, upon one year's written notice, may terminate this Master Contract, except that, notwithstanding that termination, the provisions of this Master Contract shall remain in full force and effect with respect to any Relocation of Utility Facilities required under a Notice to Owner issued prior to the Master Contract termination.

20. Time shall be of the essence of this Master Contract.

21. This Master Contract supersedes any previous Master Agreement entered into between the parties under Section 707.5 of the S&H Code. This Master Contract does not supersede any Notices to Owner or Utility Agreements issued or executed pursuant to any previous valid Master Agreement.

22. This Master Contract shall become effective when executed by the last of the two parties.

23. No state funds or resources are allocated or encumbered as against this Master Contract and Department's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Transportation Commission and the encumbrance of funds under a project specific Utility Agreement.

Owner
MCImetro ACCESS TRANSMISSION SERVICES LLC

By _____ Date March 3, 2006

Marty Hersh - Manager OSP Srvices

State of California
Department of Transportation

By _____ Date 5/5/06

Chief
Division of Right of Way and Land Surveys

Approved as to form and procedure

By _____ Date 5/5/06
Attorney for California Department of Transportation