

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____, by and between **MCI COMMUNICATIONS SERVICES, INC.**, a Delaware corporation ("MCI"), having an address at 2400 North Glenville Drive, Richardson, Texas 75082, and **SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, ("Reimbursor"), having an address at 130 E. Victoria Street, Suite 200, Santa Barbara, California 93101. The signatories to this Agreement shall be referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Reimbursor is constructing, reconstructing, crossing, or otherwise changing a portion of the Union Pacific Railroad easement or right-of-way between mile post 361.78 and 362.03, Santa Barbara, California, as part of the San Pedro and Las Vegas Creek Flood Control Projects, which requires the protection or relocation of MCI facilities along, over and/or under said easement or right-of-way;

WHEREAS, as a result of Reimbursor's construction activity, Reimbursor has requested MCI to relocate or protect a portion of its facilities without cost or risk to MCI; and

WHEREAS, MCI, under the terms hereinafter stated, is willing to undertake such relocation or protection of its facilities (the "Project") solely in order to accommodate Reimbursor, provided Reimbursor reimburses MCI for all of its costs, both direct and indirect, associated with the Project.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants herein contained, the Parties agree as follows:

1. Reimbursor agrees that Exhibit A, attached hereto and made a part hereof, represents the scope of work for the Project.
2. Reimbursor may, at its own expense, inspect construction MCI performs in connection with the Project.
3. Reimbursor agrees to bear all direct and indirect costs incurred by MCI and relating to any construction by MCI in connection with the Project, including, but not limited to, labor, materials, construction, damages, administrative overhead, taxes, travel expenses, and other reasonable out of pocket expenses. Reimbursor waives any and all delay damage claims, except if caused solely by the gross negligence or willful misconduct of MCI.
4. The total cost of the Project is estimated to be Seventy Six Thousand Eighty and No/100Dollars (\$ 76,080.00), as detailed in Exhibit B, attached hereto and made a part hereof. Reimbursor acknowledges and agrees that this amount is an estimate and shall not be construed as limiting the amount MCI is to be reimbursed by Reimbursor under this Agreement. This Reimbursement Agreement is capped at \$87,492.00 (estimate + 15%). Costs in excess of this amount must be authorized by the District Board of Directors. MCI shall provide notice to Reimbursor when MCI becomes aware that actual costs will exceed the capped amount. MCI may, in its sole discretion, submit to Reimbursor an itemized invoice for actual Project costs not more often than monthly. Reimbursor shall pay the full amount billed within thirty (30) days following receipt of the invoice from MCI.
5. Following completion of the Project, MCI shall make an accounting of final, unpaid, actual costs of the Project and provide Reimbursor with a copy of the accounting and an itemized invoice therefor. Reimbursor payment is due within thirty (30) days after receipt of the invoice from MCI. Payment shall be made to the address listed for MCI in this Agreement, unless otherwise notified by MCI in writing.
6. Reimbursor shall perform no work within ten feet (10') on either side of the existing MCI facilities located within the right-of-way until the Project has been completed.

7. The obligations of MCI are subject to force majeure and MCI shall not be in default of this Agreement if any failure or delay in performance is caused by strike or other labor problems; accidents; acts of God; fire; flood; adverse weather conditions; material or facility shortages or unavailability; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, including, without limitation, the necessity of obtaining permits or environmental assessments or environmental approvals; condemnation or the exercise of rights of eminent domain; war, civil disorder or acts of terrorism; or any other cause beyond the reasonable control of MCI.

8. Reimbursor shall give written notice to MCI at least forty-eight (48) hours, excluding Saturday, Sunday and legal holidays, in advance of commencement of any work in the immediate permitted area, subject to the limitations set forth in Paragraph 6. The notice shall be given to those individuals listed on the Contact Sheet of Exhibit A. In the event of an emergency, Reimbursor shall provide telephonic notice to MCI at 1-800-MCI-WORK upon Reimbursor's discovery of the emergency.

9. This Agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding by and between MCI and Reimbursor pertaining to the Project.

10. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

11. Each Party warrants that it has the full right and authority to enter into this Agreement. All necessary approvals and authority to enter into this Agreement have been obtained and the person executing this Agreement on behalf of each Party has the express authority to do so and, in so doing, to bind such Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

MCI COMMUNICATIONS SERVICES, INC.

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

**SANTA BARBARA COUNTY
FLOOD CONTROL & WATER
CONSERVATION DISTRICT:**

By: _____
Deputy Clerk

By: _____
Chair, Board of Directors

Date: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

**APPROVED AS TO ACCOUNTING
FORM:**

Robert W. Geis, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Ray Aromatorio
Risk Manager

By: _____

RECOMMENDED FOR APPROVAL

Santa Barbara County Flood Control & Water Conservation District

By: _____
Thomas D. Fayram